

2. 2465-  
**No. 11557**

IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

---

WILLIAM GATHER KELLEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

**TRANSCRIPT OF RECORD**

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

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FILED

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PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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JAMES M. CARTER

United States Attorney

ERNEST A. TOLIN

PAUL FITTING

Assistants U. S. Attorney

600 U. S. Post Office and Court House Building

Los Angeles 12, Calif. [1\*]

In the District Court of the United States in and for the  
Southern District of California

Central Division

September, 1946, Term

No. 19112

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM GATHER KELLEY,

Defendant.

### INDICTMENT

[U. S. C., Title 18, Sec. 318

Secrecion of and Opening Mail by Post Office Employee]

The grand jury charges:

### COUNT ONE

[U. S. C., Title 18, Sec. 318]

On or about December 21, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant William Gather Kelley, being a person employed in the United States Postal Service as a custodial laborer in the Los Angeles, California, Post Office, did secrete and embezzle a package which came into his possession as said custodial laborer, and which was intended to be conveyed by mail, addressed to Mrs. E. Johnson, 1706 South Hoover, Los Angeles, California. [2]

COUNT TWO

[U. S. C., Title 18, Sec. 318]

On or about December 21, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant William Gather Kelley, being a person employed in the United States Postal Service as a custodial laborer in the Los Angeles, California, Post Office, did unlawfully detain, delay, and open a package which came into his possession as said custodial laborer, and which was intended to be conveyed by mail, addressed to Mrs. A. S. Cluff, 2026 South Burnside, Los Angeles, California.

A True Bill.

R. W. BLANCHARD

Foreman

JAMES M. CARTER

United States Attorney [3]

---

[Minutes: Monday, January 13, 1947]

Present: The Honorable Wm. C. Mathes, District Judge.

This cause coming on for arraignment and plea of defendant William Gather Kelley; R. H. Kinnison, Assistant U. S. Attorney, appearing as counsel for the Government; Vince M. Townsend, Jr., Esq., appearing as counsel for the said defendant, who is present on bond:

The defendant states his true name is as set forth in the Indictment, and his attorney having waived reading thereof, the defendant pleads not guilty to both counts. It is ordered that the cause is hereby set for trial on January 31, 1947, at 10 A. M. [4]

[Title of District Court and Cause]

### WAIVER OF JURY

The above-entitled cause coming on regularly for trial, defendant being present with counsel, Vince M. Townsend, Jr., Esq., and the defendant being desirous of having the case tried before the Court without a jury, now requests of the Court that the case be so tried and hereby consents that the Court shall sit without a jury and hear and determine the charges against the defendant without a jury. The defendant also waives any special finding of facts by the Court.

Dated: January 13th, 1947.

WILLIAM G. KELLEY

Defendant in pro per.

I have advised the defendant fully as to his (her) rights and assure the Court that his (her) request for a trial without a jury and waiver of special findings is understandingly made.

Dated: January 13th, 1947.

VINCE MONROE TOWNSEND, JR.

Attorney for Defendant

The United States Attorney hereby waives any special finding of facts and consents that the request of the defendant be granted and that the trial proceed without a jury.

Dated: January 13th, 1947.

JAMES M. CARTER

U. S. Attorney

By Paul Fitting

Assistant U. S. Attorney

Approved:

WM. C. MATHES

United States District Judge

[Endorsed]: Filed Jan. 13, 1947. [5]

[Minutes: Friday, January 31, 1947]

Present: The Honorable Wm. C. Mathes, District Judge.

This cause coming on for trial of the defendant William Gather Kelley; Paul Fitting, Esq., Asst. U. S. Attorney, appearing for the Government; Vince M. Townsend, Jr., Esq., appearing for the defendant; the defendant being present on bond:

Charles Franzen is called, sworn, and testifies for the Government. U. S. Exhibits 1, 2, 3 and 4 are marked for identification.

At 11:10 A. M. court recesses and reconvenes at 11:20 A. M.; all present as before; the defendant is present.

Witness Franzen testifies further.

Alfred E. French is called, sworn, and testifies for the Government. U. S. Exhibits 5 and 6 are marked for identification.

At 12 o'clock noon court recesses to 1:30 P. M. Court reconvenes at 1:54 P. M.; all present as before. The defendant is present.

Witness French resumes the stand and testifies further.

Ray Kinney is called and sworn, and counsel stipulate as to certain testimony. U. S. Exhibits 1, 2, 3 and 4, heretofore marked for identification, are offered and admitted in evidence.

The Government rests. The defendant moves for judgment of acquittal and the motion is denied.

William G. Kelley is called, sworn, and testifies in his own behalf. The defendant rests.

George J. Turner is called, sworn, and testifies for the [6] Government. Witness French is recalled and testifies further.

Both sides rest. Attorney Townsend argues for the defendant.

At 4:40 P. M. the Court makes a statement and finds the defendant guilty on count 1 and guilty on count 2. It is ordered that this cause be, and it hereby is, referred to the Probation Officer for investigation and report and continued to February 10, 1947, at 1:30 P. M. for hearing and sentence. The defendant is remanded into custody of the U. S. Marshal and his bond exonerated. [7]

---

[Minutes: Monday, February 10, 1947]

Present: The Honorable Wm. C. Mathes, District Judge.

This cause coming on for hearing on report of the Probation Officer and sentence of the defendant William Gather Kelley on counts 1 and 2; Paul Fitting, Esq., Asst. U. S. Attorney, appearing for the Government; Vince M. Townsend, Jr., Esq., appearing for the defendant; the defendant being present:

Attorney Townsend makes a statement for the defendant.

The Court pronounces judgment against the defendant as follows:

\* \* \* \* \* [8]

District Court of the United States  
Southern District of California  
Central Division

No. 19112

Criminal Indictment in Two Counts for Violation of  
U. S. C., Title 18, Sec. 318

UNITED STATES

v.

WILLIAM GATHER KELLEY

JUDGMENT AND COMMITMENT AND  
PROBATIONARY ORDER

On this 10th day of February, 1947, came the United States Attorney, and the defendant William Gather Kelley appearing in proper person, and with his attorney, Vince M. Townsend, Jr., Esquire, and

The defendant having been convicted on a trial by the court without a jury, jury trial having been waived by the defendant, of the offenses charged in the first and second counts of the indictment in the above-entitled cause, to wit: that on or about December 21, 1946, in Los Angeles County, California, while employed as a custodial laborer in the Los Angeles, California, Post Office, did secrete and embezzle two packages which came into his possession as said custodial laborer and which were intended to be conveyed by mail, addressed respectively to Mrs. E. Johnson, and Mrs. A. S. Cluff; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the



custody of the Attorney General or his authorized representative for imprisonment for the period of two years in an institution to be selected by the Attorney General of the United States or his authorized representative, for the offense charged in the First Count of the indictment; and

It Is Further Ordered that sentence for the offense charged in the second count of the indictment be and is hereby suspended and the defendant is placed on probation for the period of two years following execution of the sentence imposed for the offense charged in the First Count of the indictment; and the conditions of probation are hereby fixed as follows: (1) During the term of his probation the defendant shall pay to the United States of America a fine of \$500 in installments at such times and in such amounts as the Probation Officer of this Court shall direct; and (2) Throughout the term of his probation the defendant shall comply with all rules which the Probation Officer of this Court shall prescribe for the guidance of his personal conduct.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) WM. C. MATHES

United States District Judge

Filed

A True Copy. Certified this 10th day of February, 1947.

(Signed) EDMUND L. SMITH

Clerk

(By) Louis J. Somers

Deputy Clerk [9]



[Title of District Court and Cause]

NOTICE OF MOTION FOR NEW TRIAL

To the United States of America and to Paul Fitting,  
United States Attorney:

You and Each of You Will Please Take Notice and Notice Is Hereby Given that the defendant, William Gather Kelley by and through his Counsel, Vince Monroe Townsend, Jr., on Monday, February 17, 1947, in the above entitled court and in Court No. 2 thereof, the Honorable Judge Mathes presiding, which court room is located on the Second Floor Federal Building, Temple and Spring Streets in Los Angeles at the hour of 10:00 o'clock A. M., or as soon thereafter as Counsel may be heard, will move the Court for a new trial of the above entitled action.

Said motion will be made upon the grounds as set forth in the motion attached hereto, incorporated herein by reference and made a part hereof. [10]

Said motion will be made and based upon this Notice of Motion and upon all pleadings and papers on file herein, dated this eleventh day of February, 1947.

-----  
Attorney for Defendant [11]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Feb. 12, 1947. [12]

[Title of District Court and Cause]

## MOTION FOR NEW TRIAL

Comes now the defendant, William Gather Kelley, and moves the Court to grant him a new trial for the following reasons:

### I.

The Court erred in denying the defendant's motion for acquittal made at the conclusion of the evidence.

### II.

The verdict and findings of guilt by the Court is contrary to the weight of evidence.

### III.

The verdict and finding of the Court is not supported by substantial evidence.

### IV.

The Court erred in admitting testimony of the Government's witness, Turner, overruling the defendant's objections.

Dated this eleventh (11) day of February, 1947. [13]

-----  
Attorney for Defendant [14]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Feb. 12, 1947. [15]

[Minutes: Monday, February 17, 1947]

Present: The Honorable Wm. C. Mathes, District Judge.

This cause coming on for hearing motion for a new trial; Paul Fitting, Assistant U. S. Attorney, appearing as counsel for the Government; Vince M. Townsend, Esq., appearing as counsel for the said defendant, who is present:

Attorney Townsend moves for a new trial and argues in support of the said motion. The motion for a new trial is denied and it is ordered that the defendant be remanded to custody. Counsel gives oral notice of appeal.

Attorney Townsend presents notice of appeal, motion to fix bail pending appeal, and motion to proceed in forma pauperis, and makes a statement in furtherance of motion to fix bail. Motion to admit the defendant to bail pending appeal is denied. It is ordered that the cause is hereby continued to Feb. 19, 1947, at 1:30 P. M., for hearing on proceeding in forma pauperis, and the U. S. Marshal is instructed to produce the defendant in court at that time. At the request of the defendant it is ordered that application to proceed in forma pauperis is hereby withdrawn and that the cause as to the said matter be stricken from the calendar. [16]

[Title of District Court and Cause]

## NOTICE OF APPEAL

William Gather Kelley, 1353 West 36th Place, Los Angeles 7, California: Appellant:

Vince Monroe Townsend, Jr., 4406½ South Central Avenue, Los Angeles 11, California, Telephone ADams 1-5910, Attorney for Appellant.

## OFFENSE

The defendant is charged by indictment with two counts of violating Title 18, Section 318 of the United States Code, Count One alleging that the defendant, on or about the 21st of December, 1946, being a person employed in the United States Postal Service, did secrete and embezzle a package, which was intended to be conveyed by mail, addressed to Mrs. E. Johnson, 1706 South Hoover Avenue, Los Angeles, California; Count Two alleging that on or about the same said date defendant, being employed in the United States Postal Service, did unlawfully detain, delay and open a package, which was intended to be conveyed by mail, addressed to Mrs. A. S. Cluff, 2026 [17] South Burnside, Los Angeles, California.

On Monday, February 10, 1947, the Court, with the Honorable William C. Mathes, Judge presiding, having theretofore found the defendant guilty on both counts, did pronounce judgment and did sentence the defendant to two years in the Federal Penitentiary, place to be chosen by the Attorney General of the United States on the first count, and probation for the succeeding two years on the second count, together with a fine in the sum of \$500.00.

The defendant is now being held in the Los Angeles County Jail under federal custody, and is not on bail.

I, William Gather Kelley, the Above Named Appellant, Do Hereby Appeal the Above Entitled Cause to the United States Circuit Court of Appeals for the 9th Circuit From the Above Stated Judgment.

Dated this 17th day of February, 1947.

VINCE MONROE TOWNSEND, JR.  
Attorney for Appellant

## GROUND FOR APPEAL

The ground upon which the defendant appeals is as follows:

### I.

That the Court erred in denying the defendant's motion for a new trial.

### II.

That the Court erred in denying the defendant's motion for acquittal made at the conclusion of the evidence.

### III.

That the finding of guilt by the Court on both counts and the resulting judgment and sentence thereupon is contrary to the weight of evidence.

### IV.

That the finding of guilt of the Court and the resulting [18] judgment and sentence pronounced thereupon is not supported by substantial evidence.

## V.

That the Court erred in admitting the testimony of the Government's witness, Turner, overruling the defendant's objection.

Dated this 17th day of February, 1947.

VINCE MONROE TOWNSEND, JR.

Attorney for Appellant

[Endorsed]: Filed Feb. 18, 1947. [19]

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[Title of District Court and Cause]

## ELECTION FOR STAY OF EXECUTION

To the Honorable William Mathes, Judge of the District Court of the United States, and to Robert E. Clark, United States Marshal:

You and Each of You Will Please Take Notice and Notice Is Hereby Given that the above named defendant, William Gather Kelley, does hereby declare his election that the execution of his sentence in the above entitled cause heretofore pronounced by the above entitled court be stayed pending the disposition of this cause upon appeal, or until a further election is filed by and in behalf of the said defendant.

Dated this 10th day of March, 1947.

VINCENT MONROE TOWNSEND, JR.

Attorney for Defendant [20]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 11, 1947. [21]

[Title of District Court and Cause]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 24 inclusive contain full, true and correct copies of Indictment; Minute Order Entered January 13, 1947; Waiver of Jury; Minute Orders Entered January 31, 1947 and February 10, 1947; Judgement and Commitment and Probationary Order; Notice of Motion for New Trial; Motion for New Trial; Minute Order Entered February 17, 1947; Notice of Appeal; Election for Stay of Execution and Designation of Record on Appeal which, together with copy of reporter's transcript, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$7.35 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 21 day of June, A. D. 1947.

(Seal)

EDMUND L. SMITH,  
Clerk,

By Theodore Hocke,  
Chief Deputy Clerk.



[Title of District Court and Cause]

Honorable William C. Mathes, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Friday, January 31, 1947

Appearances:

For the Plaintiff: James M. Carter, Esq., United States Attorney; Paul Fitting, Esq., Asst. United States Attorney.

For the Defendant: Vince M. Townsend, Jr. Esq.

Los Angeles, California, Friday, January 31, 1947,  
10:00 A. M.

(Case called by the clerk.)

Mr. Townsend: Ready for the defendant.

Mr. Fitting: We are ready.

Mr. Townsend: Will the court indulge us just for a moment, please?

The Court: Yes.

Mr. Townsend: Ready for the defendant, your Honor.

The Court: Mr. Fitting, I notice the United States Attorney did not sign the waiver of trial by jury.

Mr. Fitting: We have no objection to it.

The Court: The defendant's waiver of trial by jury has been approved by the United States Attorney and by the court. Are you ready to proceed, gentlemen?

Mr. Townsend: We are ready to proceed, your Honor.

The Court: Very well. The defendant is in court?

Mr. Townsend: The defendant is present in court.

The Court: William G. Kelley?

Defendant Kelley: Yes, sir.

The Court: Proceed, gentlemen.

Mr. Fitting: Mr. Franzen. [3\*]



CHARLES FRANZEN,

called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Charles Franzen, F-r-a-n-z-e-n.

Direct Examination

By Mr. Fitting:

Q. Mr. Franzen, by whom are you employed?

A. By the Post Office Department of the United States Government.

Q. In what capacity?

A. Assistant superintendent of mails.

Q. I beg pardon?

A. Assistant superintendant of mails in charge of the night tour at the Terminal Annex.

Q. And Terminal Annex is located where?

A. Macy and Alameda Streets, Los Angeles.

Q. In the City of Los Angeles. Are you familiar with the third floor of the Terminal Annex?

A. Yes; I am.

Mr. Fitting: I ask that this (diagram) be marked as Government's Exhibit for identification No. 1.

The Clerk: The diagram will be marked 1 for identification. [4]

The Court: I will interrupt at this time to hear an ex parte matter.

(Interruption for other court proceedings.)

Q. By Mr. Fitting: Mr. Franzen, have you studied this diagram which has been marked Government's Exhibit No. 1 for identification?

A. Yes; I have studied that.

(Testimony of Charles Franzen)

Q. Is that a fair and accurate representation of the third floor of the Terminal Annex station?

A. Of that section; yes, it is. That is only a section of it, you understand.

Q. What particular section is that?

A. That is the southwest corner of the third floor.

Q. The southwest corner of the third floor.

Mr. Townsend: I am sorry to interrupt. Will you speak just a little louder so that I can hear you, please?

The Court: Did you get the last answer, Mr. Townsend?

Mr. Townsend: I got a portion of it and it faded out.

The Court: Read it, Mr. Reporter, please.

(Question and answer read by the reporter.)

Q. By Mr. Fitting: Mr. Franzen, directing your attention to December 21, 1946, do you remember anything unusual occurring on that day? A. Well, yes.

Q. I show you Government's Exhibit for identification [5] No. 2—

The Court: Has that been identified in the record?

The Clerk: No; it has not, your Honor. Which is a wrapped package with paper and colored flowers, and addressed to "Mrs. E. Johnson, 1706 South Hoover, Los Angeles," and bearing cancelled United States postage stamps.

Q. By Mr. Fitting: Mr. Franzen, I hand you this package which has been marked for identification as Government's Exhibit for identification No. 2 and will ask you when you first saw that package?

A. I first saw this package at five minutes after 5:00 in the morning of December 21, 1946.

(Testimony of Charles Franzen)

Q. That is five minutes after 5:00 a.m.?

A. Yes, sir.

Q. And where did you see it?

A. In the inspector's office at the Terminal Annex.

Q. Which inspector? A. Mr. French's office.

Q. And Mr. Theo French, is it?

A. I don't know his initials. Inspector French.

Q. French, Mr. R. E. French?

The Court: He said he did not know his initials.

Mr. Townsend: We will stipulate it is Mr. French, the postal inspector.

The Court: Do you accept the stipulation? [6]

Mr. Fitting: Yes, sir.

The Clerk: This wrapper from a package bearing a six-cent cancelled United States postage stamp, bearing address to "Mrs. A. S. Cluff, 2026 South Burnside Avenue, Los Angeles, California," is marked 3 for identification.

This box without any writing upon, approximately five inches square, will be marked 4 for identification. Do you want the contents identified, too?

Mr. Fitting: No.

Mr. Townsend: If your Honor please, I think, perhaps for clarity, it might be more advisable, if counsel intends—that is, if they have relations to each other, that they be offered as one exhibit, if that is intended, or unless they have separate relationship.

Mr. Fitting: Oh, I think it is all right the way they are, your Honor.

The Court: Just so they are properly identified.

(Testimony of Charles Franzen)

Q. By Mr. Fitting: Now, Mr. Franzen, I hand you Government Exhibits for identification 3 and 4 and ask you if you have ever seen them before?

A. Yes. When I first saw this it was in one package; it was wrapped up.

The Court: By "this" what do you mean?

The Witness: Well, these two pieces.

The Court: Exhibits 3 and 4 for identification? [7]

The Witness: Yes, sir.

Q. By Mr. Fitting: In other words, Exhibit 4 was wrapped up in Exhibit 3?

A. Yes, sir; that is right.

Q. Did you see them at the same time?

A. At the same time that I saw Exhibit 2; at the same time and place.

Q. What did Mr. French say to you on that occasion?

A. He asked me to please—

Mr. Townsend: Just a moment. I object to that as being hearsay. It was not in the presence of the defendant.

The Court: No foundation laid. Sustained.

Q. By Mr. Fitting: Mr. Franzen, at that time did Mr. French give you any instructions?

A. He asked me to place these two packages—

Mr. Townsend: Just a moment, just a moment. I object to that, if the court please. Up to now it is purely irrelevant as to what instructions this gentleman received.

The Court: It is a preliminary question. Overruled. Did he give you any instructions?

The Witness: Yes, sir. He asked—

(Testimony of Charles Franzen)

The Court: No. You have not been asked what the instructions were. You have been asked only: Did he give you an instruction? Your answer is?

The Witness: Yes. [8]

Q. By Mr. Fitting: What were those instructions?

A. He asked me to place—

The Court: Just a moment. Do you have an objection?

Mr. Townsend: Yes; the same objection, if the court pleases. Up to now there is no relevancy to this case.

The Court: What is the purpose of the offer?

Mr. Fitting: If the court please, it is just to show by the man who put out these packages.

The Court: You are attempting to show oral facts?

Mr. Fitting: I am just attempting to show where the packages were put.

The Court: You are not attempting to prove the truth of what was said?

Mr. Fitting: No, sir.

The Court: Only the facts of what was said?

Mr. Fitting: No, sir; I am not offering it for hearsay purposes.

The Court: For that purpose—

Mr. Townsend: I would like to be heard on this observation, if your Honor pleases. What instructions this gentleman may have gotten from Mr. French to put these packages at some particular place would have no relation on its face with the defendant here or any of the issues in the charge.

Mr. Fitting: Let me withdraw the question, your Honor.

The Court: The question is withdrawn. [9]

(Testimony of Charles Franzen)

Q. By Mr. Fitting: What did you do with the packages, Mr. Franzen? A. I placed these—

Mr. Townsend: Just a moment. The same objection arises. What he did with them still has no connection with this defendant. He is not in the picture yet.

The Court: Overruled.

A. I placed these packages on the third floor. This one—

Q. By Mr. Fitting: You are referring to Exhibit 2 now?

A. Exhibit 2, in the Pico local paper section. That is where papers and small parcels for Pico district are worked.

Mr. Fitting: Mr. Franzen, suppose you mark on this diagram the place where you put this package, Exhibit No. 2.

The Court: By "this diagram" you are referring to Exhibit 1 for identification?

Mr. Fitting: To Exhibit 1, your Honor.

Will you please mark with an "A" the approximate place that you placed it?

A. (The witness marking on diagram.)

The Court: That identification has been marked in the upper left-hand corner of Exhibit 1 for identification, is that right? [10]

Mr. Fitting: Yes, your Honor; just above the writing "Pico Heights Station."

The Court: "Pico"?

Mr. Fitting: "Pico Heights Station."

The Court: It is a letter "A", is it?

Mr. Fitting: Yes, your Honor.

The Court: Very well. The record will be clear.



(Testimony of Charles Franzen)

Q. By Mr. Fitting: Now, you say that you placed that package where you have marked the letter "A", Mr. Franzen? A. Yes, sir.

Q. Did you put it on the floor?

A. No, sir. I put it on a sack rack.

Q. Would you describe to the court what a sack rack is?

A. Well, it is a rack, a platform about eight inches above, or so, a foot above the floor, and there is a metal rack on there in which the mail bags are hung.

The Court: What part of the rack did you put it on?

The Witness: I put it on the wooden platform.

Q. By Mr. Fitting: What is the purpose of that wooden platform, Mr. Franzen?

A. Well, I guess just to support the metal structure of the rack.

Q. What did you do with the other package, Exhibits [11] 3 and 4?

A. I put this package back in the station E, paper section, on a tray.

Q. Would you please mark on Government's Exhibit for identification No. 1 where you placed that, Mr. Franzen?

(Witness indicating on Exhibit 1 for identification.)

Q. Would you mark that with a "B"? Now, you have markel in the lower left-hand corner of the diagram the letter "B"? Just above the words "station E"?

A. That is right.

Mr. Townsend: That is indicating where he placed which exhibit, now?

Mr. Fitting: That is where he placed Exhibits 3 and 4.

Mr. Townsend: Thank you.

(Testimony of Charles Franzen)

Q. By Mr. Fitting: Mr. Franzen, on what did you put that package?

A. I put that on a tray. Oh, it is a tray about four feet long and a foot and a half wide, on castors.

Q. How high is it?

A. It is about a foot and a half high.

The Court: How deep is it?

The Witness: Well, the part that holds the mail, I would say is six inches deep.

Q. By Mr. Fitting: What is that tray used for?

A. We pick up our mail out of the cases and roll it [12] around to the different stations to work it, and work it off of these trays into the cases.

Q. Was there other matter in that tray when you placed the package in it?

A. Well, there might have been two or three small papers there.

Q. Then what did you do, Mr. Franzen?

A. I left and went on about my business.

Q. Mr. Franzen, what was the next time you went back in that area?

A. It was between 5:30 and 5:40, I would say. Mr. French called me and asked me to go back in the Pico section and see if that first parcel, Exhibit 2, was still there.

Q. Still on the sack rack?

A. That is right. And he asked me to rub my hand through my hair if the parcel was gone.

Q. Did you find the parcel? A. No.

Q. Then what did you do, Mr. Franzen?

A. I left.



(Testimony of Charles Franzen)

Q. What was the next time that you went back in there? A. I would say about 5:45.

The Court: These are all a. m. hours, are they?

The Witness: Yes, sir. About 5:45 Mr. French called me again and said that apparently this janitor—  
[13]

Mr. Fitting: Never mind what he said, Mr. Franzen.

Q. He asked you to come back, did he?

A. Yes, sir.

Q. What did you do then?

A. I went back, watched the hamper. I wanted to see where it went.

Q. Just a second. What is a hamper?

A. A hamper is a basket on castors. It is about four feet long, probably two and one-half or three feet wide, and about three feet deep.

Q. What is it used for?

A. Well, we use them to put mail in, but in this instance the janitor was using it to put the trash from the floor and sweepings from the floor in.

Q. You say you saw a hamper? A. Yes, sir.

Q. Where did you see that hamper?

A. Well, when I went back this time, the janitor was just pushing the hamper around the corner.

Mr. Townsend: Just a moment. I object to the answer as not responsive and move it be stricken.

Mr. Fitting: Mr. Franzen, would you—may I withdraw that question?

The Court: The motion is granted.

Q. By Mr. Fitting: Mr. Franzen, would you mark on [14] here where you saw that hamper? Would you mark with the letter "C" where you saw the hamper?

(Testimony of Charles Franzen)

(Witness marking on diagram.)

Q. You have marked the letter "C" about a little to the left and above the center of the diagram over the words "Eagle Rock Station"? A. I have.

The Court: The diagram is Exhibit 1 for identification?

Mr. Fitting: Yes, your Honor.

Q. Was anyone pushing the hamper, Mr. Franzen?

A. Yes.

Q. Who? A. Mr. Kelley.

Q. By Mr. Kelley you mean the defendant sitting over there? A. Yes, sir.

Q. Then what did Mr. Kelley do?

A. He left the hamper there and went back in the Station E paper section in that vicinity.

Q. He went back to the area around where you have marked "B" on this diagram? A. Yes, sir.

Q. Government's Exhibit No. 1. What did you do, Mr. Franzen?

A. I was watching that hamper to see where it went, [15] and about that time one of the foremen came and told me that Mr. French was looking for me. So I—

Mr. Townsend: I move to strike that out, what someone told him.

Mr. Fitting: If your Honor please, it is obviously not offered for any hearsay purpose. It is just to show why he left that area.

The Court: It is not offered to prove the truth of what was said?

Mr. Fitting: That is right, your Honor.

The Court: But to prove what happened?

Mr. Fitting: That is right.

(Testimony of Charles Franzen)

The Court: An oral fact. For that purpose only the objection is overruled and the answer will stand.

Q. By Mr. Fitting: Then what did you do, Mr. Franzen?

A. One of the foremen came up and told me that Mr. French was looking for me. So I—

Mr. Townsend: Just a minute, just a minute. I am sorry. I also move to strike that as not responsive to the question. No part of the answer is responsive to the question.

Mr. Fitting: Would you just answer the question, please, Mr. Franzen?

The Court: Motion is granted.

A. Well, I started to look for Mr. French then. [16]

Q. By Mr. Fitting: And you left this area then?

A. That is right.

Q. When was the next time that you came back in that area?

A. We came back about five minutes later, I would say getting close to 6:00 o'clock.

Q. When you say "we" who do you mean?

A. Mr. French and I.

Q. And how did you approach the area?

A. Well, we came in from the north aisle. I will have to show you on that diagram.

Q. All right.

A. We came in this way, around here.

Q. In other words, you came in—

A. Down this aisle here, and we went down here.

The Court: The witness indicates from the top of the diagram, Government's Exhibit 1 for identification, the first open space from the left-hand side.

(Testimony of Charles Franzen)

Q. By Mr. Fitting: You went down that aisle and then where did you go?

A. Went down this aisle and went in here.

Q. Now, you are pointing to the general area we placed the mark "B"? A. That is right.

Mr. Townsend: May I interrupt? Pardon me, counsel. [17] I want to get, at least, if we can, for clarity a sort of sense of direction here on this diagram. It would be which direction?

The Witness: Well, this is north.

Q. By Mr. Fitting: The top of the diagram is north?

A. Yes, sir. We came south, down in here.

The Court: You came south and turned toward the left into the space toward the left side of the diagram; is that correct?

The Witness: Well, it would be our right as we came down.

The Court: The southwest corner area. Would you call that the southwest corner?

The Witness: That is right; that is the southwest corner.

Q. By Mr. Fitting: What did you see there, Mr. Franzen?

A. Mr. Kelley was standing about here.

Q. Now you are pointing to a space quite a ways below the point marked "B"? A. Yes.

Q. But still in the same section of the post office?

A. That is right.

Q. What was he doing, Mr. Franzen?

A. Just standing. [18]

(Testimony of Charles Franzen)

Q. Then what did you do?

A. Mr. French asked me if the parcel I had put on the tray here—

Q. You are pointing to the point marked “B” on this Exhibit No. 1?

A. That is right. He asked me if that was gone.

Mr. Townsend: Just a moment. I am sorry. May I interrupt again and have the question re-read?

The Court: Please read the question, Mr. Reporter.

(Question and answer read by the reporter.)

Mr. Townsend: Just a moment. I want to move to strike that answer as not responsive to the question asked.

The Court: The answer just last read is stricken. Motion granted.

Mr. Fitting: May I withdraw the question, your Honor?

Q. Then what occurred, Mr. Franzen?

A. Mr. French asked me if the parcel, Exhibit—what is it, 2?

Q. Exhibit No. 3 and 4.

A. 2—or 3 and 4, that is right—3 and 4 were here, if 3 and 4 was where I had placed it, and the parcel was not there.

Q. You looked? A. I looked.

Q. And it was not there. Then what occurred? [19]

A. Well, Mr. French started to talking to Mr. Kelley.

The Court: I was not there, Mr. Franzen. What did he say?

The Witness: He asked him where that parcel was that was in the tray.

(Testimony of Charles Franzen)

Q. By Mr. Fitting: What did Mr. Kelley say?

A. Well, I don't know. He told me to go and get the—

Mr. Townsend: Just a moment. May I move to strike everything after the words "I don't know"? If he did not know, he could not say what it was.

Q. By Mr. Fitting: After you—

The Court: Just a moment. Had you finished your answer?

(Witness nodding.)

Q. By Mr. Fitting: You did not hear what Mr. Kelley said? A. That is right.

Q. You did not hear it.

The Court: The motion is granted.

Q. By Mr. Fitting: Then what occurred, Mr. Franzen?

A. Mr. French told me to get the foreman of the janitors, which I did.

Q. Who is that, do you remember?

A. Mr. Kinny, I believe his name is. [20]

Q. Mr. Kinny. You got the foreman of janitors?

A. Yes, sir.

Q. The two of you came back?

A. That is right.

Q. Then what happened?

A. Then we got the hamper from here.

Q. You are referring to the hamper at location "C"?

A. That is right.

Q. Mr. Kinny and you got the hamper?

A. That is right.



(Testimony of Charles Franzen)

Q. Then what did you do?

A. We brought it down here where Mr. French and Mr. Kelley was.

Q. Then what occurred?

A. We started looking through the hamper for these parcels.

Q. Who did, Mr. Franzen?

A. Mr. French, first, and he couldn't find it. He started pawing through it. And he said, "It is apparently down a little deeper. We will strike it."

Mr. Townsend: Just a moment. I move to strike that last answer from "apparently".

The Court: Yes. Motion granted.

Q. By Mr. Fitting: You started looking through the hamper, you and Mr. French? [21]

A. We dumped it out on the floor finally.

Q. Who dumped it out?

A. Well, Mr. Kinny dumped it out on the floor, I believe, and we started looking through the trash for these parcels.

Q. Did you find them?

A. I found this one intact.

Q. You are now referring to Government's Exhibit No. 2?

A. That is right. And then—

Q. What else did you find in there?

A. Then I found this.

Q. You are now referring to Government's Exhibit No. 4?

A. 4, that is right.

Q. For identification.

A. And then we found this.

Q. Now you are referring to Government's Exhibit No. 3 for identification?

A. That is right.

(Testimony of Charles Franzen)

Q. Mr. Franzen, directing your attention to Government's Exhibit No. 2, when you found that was that in the same condition as it was when you placed it on the Pico rack?

Mr. Townsend: Just a minute.

A. Yes.

Mr. Townsend: I object to that question as being irrelevant. There is no connection whatsoever, certainly [22] nothing anywhere close as to what was the cause of its being in the changed condition, even assuming that it was true. I think the question, without stating the situation, is doubly irrelevant.

The Court: Overruled. You may answer.

A. Yes; Exhibit 2 was in the same condition as when I placed it on the Pico rack.

Q. By Mr. Fitting: Mr. Franzen, is that exhibit still in the same condition as it was when you placed it on the Pico rack?

A. Except for these initials on here; yes.

The Court: What initials?

Q. By Mr. Fitting: Would you explain to the court what those initials are?

A. These initials below here are my initials. I put my initials on this parcel to identify it.

The Court: Read the initials.

The Witness: "C. O. F."

Q. By Mr. Fitting: When did you put those on?

A. Well, I put those on down at the inspector's office, later.

Q. After you had found the package?

A. Yes, sir.



(Testimony of Charles Franzen)

Q. On the same morning?

A. Not on the same morning; no. [23]

The Court: You are referring to the initials in the upper left-hand corner of Exhibit 2 for identification?

The Witness: Yes, sir.

Q. By Mr. Fitting: Are there any other initials on that package, Mr. Franzen?

A. Yes, sir; there are. I can't read them. They are not my initials.

Q. Were you there when they were placed on that package? A. No; I was not.

Q. And on the back are there some initials, too?

A. Yes; there are initials on the back. Those are not my initials.

Q. Except for those initials, that package is in the same condition? A. That is right.

Q. Now directing your attention to Government's Exhibits for identification 3 and 4, are they in the same condition as they were when you put them in Station E?

A. No. When I put these in Station E they were wrapped in one parcel. I didn't see this at all when I put it down there.

The Court: That is the box, Exhibit 4 for identification?

The Witness: That is right.

The Court: It was wrapped in the wrapper, Exhibit 3 for [24] identification; is that what you mean?

The Witness: Yes, sir.

Q. By Mr. Fitting: Now directing your attention to the wrapper, Exhibit 3, that, again, has some initials on it, does it not, Mr. Franzen? A. Yes, sir.

(Testimony of Charles Franzen)

Q. Were those initials on there when you placed that wrapper on the table in Station E?

A. No; they were not.

Q. Are your initials on there, Mr. Franzen?

A. Yes, sir; right here, "C. O. F."

Q. You are referring now to the initials in the lower left-hand corner of the front of the wrapper?

A. That is right.

Q. Are your initials also on this box marked Government's Exhibit No. 4?

A. Yes, sir; they are my initials.

Q. And they are in the upper left-hand corner, are they?

A. Yes, sir.

Q. That is "C. O. F."?

A. That is right.

Q. When did you put your initials on Exhibits 3 and 4, Mr. Franzen?

A. I put my initials on there sometime later, down in [25] the inspector's office. I don't know just when.

Q. Mr. Franzen, when you testified that you went into this place marked "A" on Government's Exhibit 1 to see if the package that you had put there was still there—

A. That is right.

Q. —when you went there did you see the defendant Kelley anywhere?

A. No; I did not see him.

Q. Did you hear him?

Mr. Townsend: Just a moment.

A. Yes; I heard him.

Mr. Townsend: Just a moment. I object to that question. It certainly calls for a conclusion of the witness.

Q. By Mr. Fitting: Have you known the defendant Kelley for a long time, Mr. Franzen?

A. Yes; I have known him for several years.

(Testimony of Charles Franzen)

Q. Do you know his voice? A. Yes.

Q. Have you heard him singing?

A. At different times.

Q. Would you recognize him if you heard him singing? A. I would down at the Terminal Annex.

Q. Now, on this morning of December 21st when you went back to the place marked "A" on Government's Exhibit No. 1 did you hear the defendant Kelley? [26]

A. Yes, I heard him.

Q. Was he singing? A. Yes; he was singing.

Q. Could you tell where he was singing?

A. He was back in—

Mr. Townsend: Just a moment. I object to that as calling for a conclusion of this witness.

The Court: Yes. In that form, sustained. Where did the sound appear to come from?

The Witness: It appeared to come from back in the Station E paper section where I had placed the other parcel.

Q. By Mr. Fitting: That is the place that has been marked by you "B" on Government's Exhibit No. 1?

A. Yes, sir; in that approximate area.

Mr. Fitting: That is all.

### Cross Examination

By Mr. Townsend:

Q. Now, Mr. Franzen— A. Yes, sir.

Q. —with regard to the location of this singing that you heard, where were you at the time in relation to the diagram on the board? A. Right in here.

(Testimony of Charles Franzen)

Q. Indicating approximately how many feet south from [27] the entry to the floor?

A. From where did you say?

Q. From the entry to the floor. You entered from the north, I think you testified, did you not?

A. Not this time; no. I came straight down this aisle.

Q. You came from the east, this side? A. Yes.

Q. With regard to the west wall where were you?

A. To the west wall? Well, I would say about 35 feet.

Q. About 35 feet from the west wall?

A. Yes, sir.

Q. And where, approximately, did this music come from? A. This singing came from down in here.

Q. And that was approximately how far from where you were in terms of feet south?

A. That is about 28, 30—oh, I would say 45 to 50 feet.

Q. And what, if any, obstructions to your vision between the point where you were standing and the point from which the music was coming?

A. These cases.

Q. How high are the cases?

A. Oh, about seven feet I would say.

Q. Higher than you could see over? [28]

A. Oh, yes.

Q. How low do they extend toward the floor?

A. Oh, they are on legs; about two and one-half feet, I would say.

Q. From where you were standing could you see under them?

A. I could if I got down and tried.

(Testimony of Charles Franzen)

Q. Did you at that time see under them?

A. No.

Q. From where you were could you see around them?

A. No.

Q. Down 45 feet?                      A. No.

Q. Now, you say that you can quite easily identify the music of the defendant if in the Annex. Could you explain why the ability to hear particularly at one place, but perhaps not at another.

A. Well, If I would hear somebody singing on the street, where there are thousands of people around, maybe I wouldn't recognize Kelley; but back down at the Terminal Annex, where I have heard him for years and I knew he was in the immediate vicinity, I recognized his voice.

Q. Now, you have thousands of people in the post office, do you not?

A. Well, not back there at that time in the morning. [29]

Q. This was around Christmas time, was it, December 21st?                      A. That is right.

Q. That was about the time when your Christmas rush is at about its peak, isn't it?

A. That is right; that is just about the peak.

Q. So, at that particular scene, you would in all likelihood have more people in and about the place at that time than any other usual time of the year; isn't that right?

A. Yes; but they were not in that section at that time.

(Testimony of Charles Franzen)

Q. How do you particularly identify this music so uniquely as being that of Mr. Kelley's?

A. Well, I have heard him around there for years and I have heard him singing around there before.

Q. Would you say he was a good singer?

A. Oh, just ordinary.

Q. Just ordinary. And yet you particularly—strike that for the moment. Did you ever hear anybody else sing around there, of all of these thousands of employees?

A. Oh, sure.

Q. You hear music, in fact, all about the building?

A. Is that a question?

Q. That is a question. You hear people and singing from one part of the building to the other where you go?

A. Yes, sometimes; not a great deal of it. [30]

Q. Do you hear singing with any reasonable degree of regularity? A. No.

Q. But you do hear it, you would say, reasonably often? A. Once in a while; yes.

Q. From persons other than Mr. Kelley?

A. Yes.

Q. In the light of the comparative voices or abilities of the others that you heard, how would you particularly be able to know uniquely Mr. Kelley's?

A. Well, as I said before, I know Mr. Kelley's voice.

Q. The question is "how"?

A. Well, that is a question that is pretty hard to answer.

Q. He was 45 feet away, I think you have testified, and no possible visibility— A. That is right.

Q. —over, below or around?

A. That is right.



(Testimony of Charles Franzen)

Q. Now, I think it is a rather serious question as to how you know he was the defendant. Was he singing loudly? A. Oh, yes; he was singing loudly.

Q. How loud?

A. Well, loud enough for me to hear him.

Q. And what was the quality of his voice; was he a [31] tenor singer, bass singer, or where would you classify him among the singers?

A. Well, I would say he is pretty bass.

Q. Bass? A. Yes.

The Court: Were there other people around there at that time?

The Witness: There were about three or four mail handlers hanging sacks at that time.

The Court: In this general section indicated on the diagram, Exhibit 1 for identification?

The Witness: Where my mark "A" is there, there were three or four mail handlers hanging sacks.

The Court: Any other people in that section at that time?

The Witness: No; not in the immediate section.

Q. By Mr. Townsend: What do these diagrams here represent? What are these?

A. Those are paper cases.

Q. Are there any of the personnel of the employees working at these cases at that hour of the morning?

A. No. As I just told your Honor here, there were three or four mail handlers hanging sacks.

Q. And where were they with regard to the diagram here? A. By the mark "A". [32]

Q. They were up in here? A. Yes.



(Testimony of Charles Franzen)

Q. That would be north of where you were standing?

A. North of where I was standing.

Q. That is what I am asking.

A. No. Directly west of where I was standing.

Q. Directly west? A. That is right.

Q. You were here and they were there?

A. No. Let me show you. I was standing here, just about here, and they were in here.

Q. Working in between? A. That is right.

Q. Were they working to this diagram or to this?

A. Oh, I don't know particularly. They were in here in this immediate section.

Q. I mean do you know the type of work they were assigned to do right at that point?

A. Yes. They were hanging sacks on these sack racks.

Q. Where were the sack racks, right in the middle of the floor? A. Yes; scattered around in there.

Q. I see. Do you know how many of them that there were working about those sacks?

A. There were three or four. I don't know exactly. [33]

Q. Were there any others working down at the aisle next south of your first diagram, between the two?

A. No; there were not.

Q. Do you know whether or not there were any working on down in the southwest corner area?

A. I couldn't see anyone down there. As far as I know, there was no one there. I couldn't see.

(Testimony of Charles Franzen)

Q. You were there during that morning or sometime during this transaction, were you not?

A. Oh, yes. When I went back there, there was no one there.

Q. Just you and Mr. French and the defendant?

A. Mr. Kinny was there.

Q. And Mr. Kinny? A. That is right.

Q. Anyone else? A. No.

Q. You went or were called to the office of Mr. French around 5:00 o'clock in the morning; and you stated that you were given some instruction with regard to certain packages which are on exhibit, is that correct?

A. Yes.

Q. At the time when you were given those instructions did you know where the defendant was?

A. No. [34]

Q. Had you seen him during the course of that working day? A. No.

Q. What were your working hours on that date?

A. Well, I start at 9:00 o'clock and I stayed around until 7:30 or 8:00 o'clock. My regular working hours are 9:00 to 5:30, but during Christmas I stayed around.

Q. Is that 9:00 in the evening until 5:30 in the morning? A. Yes, sir.

Q. And you had been on that night since 9:00 o'clock the evening before? A. Yes, sir.

Q. Do you know what the working hours of Mr. Kelley were? A. No.

Q. But you had not seen him at all during the entire night prior to this hour in the morning?

A. Yes; that is right.

(Testimony of Charles Franzen)

Q. Had you heard him singing any time during the night prior to that time in the morning?

A. No, no.

Q. Now, I think you stated that you had some conversation with Mr. French in Mr. French's office?

A. Yes. [35]

Q. What was the substance of the conversation, that is, relative to these packages?

A. Well, he told me that he had two packages here, and he asked me to place the packages on the third floor, this Exhibit 2 in the Pico paper section, and this one in the Station E paper section.

The Court: Exhibits 3 and 4?

The Witness: Exhibits 3 and 4.

Q. By Mr. Townsend: At that time, I think you testified, Exhibits 3 and 4 were one, is that right?

A. That is right.

Q. Exhibit 4 being wrapped in 3?

A. Yes; that is right.

Q. And when you later found it, I think you found it among the trash after this hamper was dumped out by Mr. Kinny?

A. That is right.

Q. Is that right? A. That is right.

Q. Was it still one, that is, still wrapped?

A. Yes.

Q. This 3 and 4? A. No. It was not wrapped.

Q. It was then unwrapped?

A. That is right. [36]

Q. Now, I think you stated the first package, that is, Exhibits 3 and 4, I believe, were placed upon a sack rack?

A. That is right.

(Testimony of Charles Franzen)

Q. Is that right? Resting on some wooden post or platform? A. That is right.

Q. Approximately how high is that post from the floor, from where this rack stands on the floor?

A. Approximately, oh 15 inches.

Q. And was it loaded with sacks at the time?

A. No; there were no sacks on the rack.

Q. Was this one of the sack racks that you speak of at which three or four people were working in that area?

A. Not at that time. There was no one working there when I placed the package.

Q. In the same area in which you mentioned a moment ago that there were three or four people working?

A. Where I made the mark "A".

Q. This is "A"? A. That is right.

Q. Were the same three or four people working in this area when you put the package at this point?

A. No; there was no one working there.

Q. That was approximately five minutes past 5:00?

A. 5:10. [37]

Q. 5:10 in the morning and no one was working there? A. That is right.

Q. Are you familiar with the work hours of the employees who work in this area? A. Yes, sir.

Q. At this hour of 5:10 do they have a scheduled working time to be in this area?

A. Oh, sometimes they are working there at that time, but this particular morning they were not.

Q. Do you know where any of them were?

A. Do I know where they were at that time?

Q. Yes. A. Yes, I know where they were.

(Testimony of Charles Franzen)

Q. Did you know personally any of the persons who were in this area when you later came back there?

A. Well, they were Christmas temporary people, but I don't know them personally.

Q. Did you see any of them when you came to put the package at this point?

A. No; I didn't see any of them.

Q. Had there been anyone working at this general area throughout the night prior? A. Yes, sir.

Q. In the handling of mails you have janitors working, cleaning up the floors, all through the night, do you? [38]

A. No. They don't work back there.

Q. You don't have janitors sweeping back there?

A. Not that time of night.

Q. Do you have them any other time of night?

A. In the morning they start sweeping.

Q. About what time? A. About 5:00, 5:30.

Q. This is 5:10; so this would be in the hours that the janitors would be there, is that right?

A. Well, I don't assign the janitors to the sweeping. I don't know what their hours are, but I know they start in the morning.

Q. In other words, you don't know anything about the janitors as to their assignment, as to when they are due or at what place?

A. That is right; I don't know anything about it. I have nothing to do with it at all.

Q. You have no information concerning it?

A. Only what I see on the floor.

Mr. Fitting: If your Honor please, this cross examination is obviously beyond the scope of the direct examina-

(Testimony of Charles Franzen)

tion. Mr. Franzen has not testified that he knows what the janitors do, I think, Mr. Townsend.

The Court: There is no question pending. Put your next question. [39]

Q. By Mr. Townsend: The question is: That you don't know whether or not there were one janitor or 10 janitors in that area about that same hour of the morning, other than Mr. Kelley, do you?

A. Only what I saw.

Q. They could have been there without you seeing them, I take it? A. Yes; they could have.

Q. Now, you placed a second package on a tray?

A. Yes, sir.

Q. I think you testified about six inches deep in the mail container. Where was that tray?

A. Where I have that "B" marked down below there. That is right.

Q. That is "B". Did you go directly from "A" to "B"? A. Yes; I did.

Q. With the two packages? A. Yes; I did.

Q. In going that way, you passed these two intervening work obstructions?

A. Yes, sir; went around there.

Q. Was there anyone working at either side of these areas when you were coming from here down to there?

A. No.

Q. Now, did you see the defendant at any time at any [40] of these points between here and down there?

A. No.

The Court: You mention "from here to there" and there is nothing in the record to show what you mean.



(Testimony of Charles Franzen)

Mr. Townsend: From "A" to "B". I am sorry. Indicating from "A" to "B".

A. No; I didn't see him, not on that first trip.

Q. In fact, you did not see the defendant at all on that first trip? A. No.

Q. Then it was some 40 minutes later before you returned to the same area, is that right, 5:45, I think, to be exact?

A. No. I went back there, I said, between 5:30 and 5:40 to see if that parcel which I placed at the spot "A" was still there.

Q. I think your testimony was that you—

The Court: Do not argue the question, Mr. Townsend. Just put your next question.

Q. By Mr. Townsend: Did you not testify that Mr. French instructed you to go back there at exactly 5:45 a. m.? A. No; I didn't.

Q. Where were you during the intervening period between this 5:10 and approximately 30 minutes later that you came back? [41]

A. Oh, I was about my business in other parts of the building.

Q. And were you where you could get any view at all of this general area that is in question?

A. No.

Q. Did you leave the floor completely during that period? A. Possibly. I don't remember.

Q. You don't recall where you were?

A. I was in other parts of the building. I am in charge of the entire building.

Q. And at no time up to this point had you seen the defendant at all? A. Up to what point?



(Testimony of Charles Franzen)

Q. That is leading up to the return at somewhere around 5:40.

A. I saw him get off the elevator on the third floor shortly after I placed the packages there.

Q. Approximately what time would you say that was?

A. Oh, possibly 5:20 a. m.

Q. 5:20 you saw him getting off the elevator?

A. I said, "approximately."

Q. Now, approximately how long was it in terms of minutes after you saw him getting off the elevator and when you came back and saw him at the next time on the floor? [42]

A. The next time I saw him was when he rolled the tub, his hamper, around where I have the mark "C".

The Court: About how long was that after?

The Witness: I would say that was, oh, 30 to 40 minutes.

Q. By Mr. Townsend: About 30 to 40 minutes after you saw him getting off the elevator, when you next saw him pushing the hamper at point "C"?

A. That is right.

Q. Or at or about point "C"?

A. That is right.

Q. And the time that you saw him get off the elevator was a time subsequent to the time when you had placed the package at "A" and the package at "B"?

A. That is right.

Q. Is that right? A. That is right.

Q. Approximately how long was it after you had made the two placements that you saw the defendant get off the elevator? A. Five or 10 minutes.

Q. Five or 10 minutes? A. Yes, sir.

(Testimony of Charles Franzen)

Q. So that you would approximate an outside time of about 45 or 50 minutes between the two situations, that is, when you placed them there and when you saw the defendant? [43]

The Court: By "here" you mean at point?

Mr. Townsend: At point "C"?

A. Yes; that is right.

Q. And during that entire interval you were at some other point, at some other part of the building?

A. Yes, sir. Not the entire interval, because, as I said before, I was sent back there once to see if the parcel which I had placed at "A" was still there.

Q. And what time was that?

A. I said between 5:30 and 5:40, approximately; and I was sent back again to watch that hamper.

Q. You were sent back again. At the time you were sent back to see whether or not the packages were there—

A. Yes.

Q. —did you go to or look at the places where you placed them? A. Just where I placed—

Q. "A"? A. Yes.

Q. Point "A"? A. Exhibit 2, yes.

Q. Would that be point "A"? A. That is right.

Q. You looked at point "A" where you placed the first package? [44] A. That is right

Q. Did you observe the floor? I think you stated this is about six inches from the floor where you placed it, I believe, approximately? A. Well, about 15 inches.

Q. About 15 inches from the floor? A. Yes.

Q. Did you observe the floor in that area?

A. Yes. I looked very closely for that package.

(Testimony of Charles Franzen)

Q. In observing the floor did you notice whether or not it had been swept or cleaned between the time that you placed the package there and the time you came back?

A. No; I didn't pay any particular attention to it.

Q. You made no observation with regard to whether or not it had been serviced by the janitor?

A. No; I didn't. That is right; I didn't.

Q. When did you next look at point "B"?

A. Well, when Mr. French and I went back there, getting close to 6:00 o'clock.

Q. Was the package at that point, at this tray, I believe you called it, when you got there?

A. No; it was gone.

Q. Did you observe the floor and the general area about there?

A. I was looking for the package. [45]

Q. Did you observe whether it had had janitorial service since your last appearance?

A. No. No; I didn't observe that.

Q. When the janitors clean up in these areas, they clean from the top of these things down to the floor, don't they? That is their responsibility, is to sweep—

A. No.

Q. —dust and what not down?

A. I have nothing to do with the instructions which the janitors get, but I would—my opinion would be no.

Q. Do you have any different sets of people who clean these racks that you have in the diagram here and those that sweep the floor?

A. I have nothing to do with that branch of the service.

(Testimony of Charles Franzen)

Q. And, therefore, you have no recollection?

A. No.

Q. Do you know which way the defendant was going when you first observed him with the hamper?

A. When I first observed him with the hamper I just saw him come around the corner there.

Q. In which direction, coming from which way and going which way?

A. Well, he came from the south and went around that pillar; that round circle there is a pillar.

Q. That is, he came from the south, this way? [46]

A. Yes. He came—I saw him come around this corner and stop there. I was standing down here, quite a ways down. I saw him come around like this and stop.

Q. Where were you, approximately, in terms of feet from the east wall of the floor where you were standing?

A. From the east wall of the floor?

Q. From the east wall of the floor, indicating on the diagram here.

A. Oh, that is—I would say I was approximately 75 feet from here down this way.

The Court: "From here" you mean what?

Q. By Mr. Townsend: From point "C" where you were standing? A. That is right.

Q. And you saw the defendant coming from the—

A. Saw him come around the corner. That is all I could see.

Q. The west aisle, from a southerly direction, going north? A. That is right; that is right.

Q. And then turn east? A. That is right.

Q. Is that correct? A. Yes, sir.

(Testimony of Charles Franzen)

Q. In other words, you saw him on the turn? [47]

A. That is right.

Q. You at no time saw him at point "A", did you?

A. No.

Q. That is, up to this point of time?

A. I never did see him there.

Q. And at no time did you see him at point "B"?

A. I never saw him there; no.

Q. At some later point, you and Mr. French, I think you said, were there at the scene together. Approximately how long was that after you first saw the defendant?

A. It was about nearly 6:00 o'clock when we went back there together.

Q. After you saw the defendant first turn this corner at "C" then what did you do or where did you go?

A. I stayed there until a foreman came up and told me that Mr. French was looking for me. So—

Q. Approximately how long did you stand there before your attention was called to something else?

A. Oh, I was there probably five or 10 minutes.

Q. And during that period of five or 10 minutes did you observe the defendant at that point "C"?

A. No. He pushed his hamper around and then he left.

Q. Did you observe whether or not he had anything else in the way of working tools aside from the hamper?

A. Oh, he had a broom and he had a dust pan hanging [48] on the side of the hamper.

Q. What kind is it? One of these push brooms would you say? A. That is right.

Q. And a dust pan? A. That is right.

(Testimony of Charles Franzen)

Q. Did you observe a hand broom?

A. No; I didn't.

Q. Which direction did you observe him go when he left his hamper at point "C"?

A. He went back, around the pillar and went south again.

Q. That is, turned the corner back in the same direction from which he came? A. That is right.

Q. Then you did not see him any more until after you had gotten in the company of Mr. French?

A. That is right.

Q. Now, approximately how long before you and Mr. French came back together?

A. Oh, you mean from the time I left to find Mr. French?

Q. From the time you received instructions from some gentleman that Mr. French was looking for you. From that point down to the point that you came back with Mr. French, [49] about how long in terms of minutes?

A. About five minutes.

Q. About five minutes? A. Yes, sir.

Q. And where did you and Mr. French first go when you came back into the general area?

A. We went through the passageway on the north side of the building to that—well, I had better show you on the diagram. We came across up here. I met Mr. French about here. He went across the passageway here and went down here like this.

Q. When you came from the point north to south when did you next see the defendant?

A. He was back here.



(Testimony of Charles Franzen)

Q. That is, where you first saw him when you were with Mr. French? A. That is right.

The Court: You are referring to—

Mr. Townsend: A point that is the southwest corner area.

The Court: A point below the place where you marked “B”?

The Witness: That is right, your Honor.

Q. By Mr. Townsend: About how many feet is it in this area between “B” and the south wall? [50]

A. Between “B” and the south wall—well, let’s see. There is about—it is 28 feet from the center to center of those pillars; so I would say it is about 25—35 to 40 feet—about 40 feet.

Q. About 40 feet. And from about this westerly aisle to the west wall, would you approximate that about the same distance? A. That is about 40 feet.

Mr. Fitting: If the court please, I suggest that they mark that place. Then it would be easier to find.

Q. By Mr. Townsend: Would you mind marking where the defendant was standing? I think you said he was standing in that area. A. Right in here.

Q. You might mark—A, B, C, D—D, I imagine. We have no letter “D”, if you will. So the defendant was standing about the letter “D” when you and Mr. French came back to that area, is that right?

A. That is right.

Q. Did you observe where the defendant’s hamper was standing? A. Still back here.

Q. Still at point “C”? A. That is right.



(Testimony of Charles Franzen)

Q. Did you observe when you came around here what the [51] defendant was doing?

A. Well, he had a piece of paper in his hand, rolling it up.

Q. Did he have his working tools, his broom and his other working equipment?

A. I don't remember if he had his broom with him or not. I know he didn't have his dust pan, because that was on the side of the hamper; and I don't remember where the broom was.

Q. Did you observe what he was doing when you and Mr. French came up?

A. He was standing there with a piece of paper in his hand, rolling it up like this.

Q. Now, I think you testified that you and Mr. French immediately approached the defendant, is that correct?

A. First, we went to see if this parcel which I placed at "B", that is, Exhibits 3 and 4, was still there where I placed it.

Q. So that, then, was the first time you had went back to take a second observation as to the second point where you placed a package?

A. Yes.

Q. After having looked there, then what happened with regard to you and Mr. French and the defendant?

A. Mr. French asked me if the parcel was still there. [52] I said, "No; it is gone." He approached Mr. Kelley and asked Mr. Kelley what he did with that parcel that was there. And he told me I had better go back and get the janitor foreman, which I did.

Q. And I think it was at that point that you stated that Mr. French began talking with Mr. Kelley and that you left?

A. That is right; that is right.

(Testimony of Charles Franzen)

Q. So that you no longer knew what happened?

A. That is right.

Q. Now, you went and got Mr. Kinny, is that right, the foreman?

A. Yes, sir.

Q. After you had gotten back on the scene with Mr. Kinny, then what took place with regard to the three of you and the defendant?

A. Mr. French started looking through the hamper. First, I got the hamper. I got the hamper and brought the hamper back here right below point "B".

Q. About point "B"?

A. About point "B". Mr. French started looking through the hamper for these parcels, Exhibits 2 and 3 and 4, and he didn't find them. So then Mr. Kinny dumped the trash out on the floor, emptied it all out and we started pawing through that. And I first found Exhibit 2, and then [53] one of us—I don't remember who—found this Exhibit 4. And then I found Exhibit 3, this wrapper.

Q. Now, approximately how much trash was in this hamper?

A. Oh, the hamper, I would say, is so long, so high and so wide, and it was two-thirds full.

Q. Two-thirds full, indicating that some trash had been picked up from somewhere?

A. Yes.

Q. I think you testified these two packages were found rather deep down in the trash near the bottom after you had turned it upside down?

A. Well, we dug down in a ways and couldn't find it; so it must have been down pretty well towards the bottom.

(Testimony of Charles Franzen)

Q. Do you have an incinerator here in this building where hampers are taken when they are filled with trash?

A. That is not my business at all.

Q. Do you know whether or not such a fact exists?

A. Yes; they bring trash down in the basement.

Q. Do you know whether or not they have a man in the incinerator, assigned to the exclusive duty of sifting trash for possible parcels being lost within it or accidentally picked up within it? A. I don't know.

Mr. Fitting: I object to that, your Honor, on the ground that it is not Mr. Franzen's duty and it is irrelevant [54] and immaterial.

The Court: He may tell what he knows about it. Overruled.

A. I do know that at times there is a man assigned in the basement to go through this trash; but, as I say, that is not my duty and I don't know if there is a regular man there or just what is the schedule or anything about it. I know the trash is sifted, though, gone through.

Q. By Mr. Townsend: Isn't it just more or less an ordinary thing, Mr. Franzen, that during the Christmas rush period when the mails are extra heavy, that a small parcel like this is quite often picked up in the trash by a janitor sweeping? A. Yes; sure they do.

Q. And is that not the specific purpose for which such a man would be assigned to that incinerator to sift the trash? A. Yes.

Mr. Townsend: That is all.

Mr. Fitting: That is all.

The Court: You may step down, Mr. Franzen. We will take the morning recess at this time of five minutes.

(Short recess.)

(Testimony of Charles Franzen)

Mr. Townsend: If your Honor please, I should like to ask the witness just about one or two more questions.

The Court: Very well. [55]

Q. By Mr. Townsend: Mr. Franzen, can you describe the conditions of light back in this area of the floor about that time of morning?

A. Which time do you specify, now?

Q. I am speaking of between the hours of 5:00 and 6:00 in the morning.

A. Well, we have the overhead lights. You mean whether the lights were on or not?

Q. Whether they were bright or dim, whether they were on in full or they were just partially lighted at that hour in the morning.

The Court: At that time of year is there total darkness outside?

The Witness: No, no. At that time in the morning the lights were—well, I will show you on this chart. We have overhead lights approximately here. These lights were on in here. This area here was well lighted. Pretty dark back in here.

The Court: Are you referring to the area around the "A"?

The Witness: That is right. That was well lighted here; it would be well lighted in here; but the lights in here were off. It would be pretty dark.

The Court: You are referring to the area west of "A"?

The Witness: West of "A"; yes, sir. [56]

The Court: Against the west wall?

The Witness: Yes, sir. But this was not lighted.

(Testimony of Charles Franzen)

Q. By Mr. Townsend: Not all the lights were lighted? A. That is right.

Q. And the same condition prevails with regard to area "D" and area "B"?

A. Of course, those lighting switches were just on these posts and people have to switch them on and switch them off. If a man wants to work back in here, they switch the lights on. The janitors come in and they switch the lights on in the morning when they sweep. When they get through working they switch them off. The lighting varies and conditions are not always the same.

Q. Do you know whether the lights were on or off when you went to place the packages there, that is, all the switches? A. When I put them there?

Q. Yes; at 5:10.

A. These lights in here were on.

Q. That is, the aisle lights; you are referring to the aisle lights?

A. Yes. And the lights down in here were off. I turned the lights on, placed my parcel, and turned the lights off and left.

The Court: You refer to the area "B"? [57]

The Witness: Yes, sir.

Q. By Mr. Townsend: Area "B" and area "D", is that right? A. Yes, sir.

Q. When you came back the first, that is, the time you were standing some 75 feet west of point "B" and saw

(Testimony of Charles Franzen)

Mr. Kelley arriving at point "C" what were the state of the lights back in the area at that time?

A. The lights were on here and here, and we have men working back in here, hanging sacks, as I said before, and they had these lights on.

Q. And down in area "B" and "D", or did you observe?

A. I do not recall what the condition of the lights was there.

Q. You are not familiar with the janitors' instructions at all?      A. No.

Mr. Townsend: I am sorry. That is all.

Mr. Fitting: Mr. French.

ALFRED E. FRENCH,

called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Counsel has handed me two photographs. The photograph of the interior of the building which bears [58] the word "Pico 6" has been marked 5 for identification. The photograph of the interior of a building with an arrow pointing to a table upon which apparently papers or something similar are situated is 6 for identification.

Direct Examination

By Mr. Fitting:

Q. By whom are you employed, Mr. French?

A. By the Post Office Department of the United States.

Q. In what capacity?      A. Post office inspector.



(Testimony of Alfred E. French)

Q. Did you see the defendant, Mr. Kelley, on the morning of December 21st? A. I did; yes, sir.

Q. Did you see the packages which have been marked for identification as Government's Exhibits 2, 3, and 4 on the morning of December 21st? A. Yes, sir.

The Court: Is that 1946?

Mr. Fitting: 1946.

Q. In both cases, 1946?

A. That is correct; yes, sir.

Q. Was that the first time that you had seen those packages?

A. No, sir. The packages had been around in our office [59] previously.

Q. Do you know who prepared those packages?

A. Yes, sir.

Q. Who did?

A. Post Office Inspector Ray Shore. Post Office clerk Harvey Surdam, and I.

Q. Directing your attention to Government's Exhibit No. 2, was that in substantially the same condition as it was when you prepared it? A. It is; yes, sir.

Q. Directing your attention to Government's Exhibits Nos. 3 and 4, are they in substantially the same condition as when you prepared them, you and the other gentlemen prepared them?

A. Except that they were all one piece at the time they were prepared and sealed with this heavy Scotch or heavy brown sticker tape.

Q. Did you personally see Exhibit No. 4 wrapped in Exhibit 3? A. I did; yes, sir.



(Testimony of Alfred E. French)

Q. Are there any identifying marks on Exhibit 4 by which you can be sure that is the package that you wrapped in Exhibit 3? A. Yes.

Q. Would you please point out to the court what those [60] identifying marks are?

A. On the inside of this box there is a capital S written in with a pen and ink in the inside corner of the box.

Q. Who wrote that letter there?

A. Inspector Ray Shore.

Q. In your presence? A. Yes .sir.

Q. On the morning of December 21st you had those packages in your possession, did you? A. Yes, sir.

Q. What did you do with them?

A. At five minutes after 5:00 Mr. Franzen came to my office and I handed the two packages intact to him.

Q. Did you give him any instructions?

A. Yes, sir. I instructed Mr. Franzen to place Exhibit No. 2 on the wooden platform of a sack rack in the Pico Heights station area where I would be in such position that I would be able to keep it under observation; and Exhibit No. 4, with Exhibit No. 3 wrapped securely around it, I requested him to place on a table in the Station E circular and small package distribution section.

Q. Then what did you do?

A. I then proceeded to go to the observation gallery on the third floor.

Q. Mr. French, would you please mark on Government's [61] Exhibit No. 1 the location of the observation gallery?

A. Yes, sir. The observation gallery runs from this point at the upper edge of Exhibit No. 1 for a number of feet in an easterly direction.

(Testimony of Alfred E. French)

Q. Is that the part of the diagram that is marked "Lookout over"? A. That is correct; yes.

Q. Where did you go in that observation gallery?

A. I went to this point right here.

Q. Will you please mark that "E"? A. "E".

Q. And that is on the westerly corner of the—

A. That would have been over slightly. May I erase that and put it over slightly? Just about in line with the eastern end of this Pico Heights Station case; about right here.

The Court: Mark it dark enough, Mr. French, so we can see it. I cannot even see the mark you have made from here.

Mr. Fitting: I am putting a circle around it, your Honor.

The Court: Very well.

Q. By Mr. Fitting: The place that is marked "E" with a circle around it is the spot where you went in the lookout gallery? A. That is correct. [62]

Q. Approximately what time did you arrive there, Mr. French? A. About 5:15 a. m.

Q. Directing your attention, Mr. French, to Government's Exhibit for identification No. 5—

A. I should have—may I correct that, please? It was about 5:10 a. m. It took me about five minutes to arrive there.

Q. Directing your attention to Government's Exhibit for identification No. 5, is that an accurate representation of the view of the floor of the post office from that observation gallery? A. It is; yes, sir.

Q. Looking straight out from the observation gallery?

A. Looking south directly.

(Testimony of Alfred E. French)

Mr. Townsend: If the court please, I am sorry to interrupt, but I think I will have to object to that. I think the best evidence would be either the person who took the picture, or I think it would be his conclusion in looking at the picture.

The Court: He may say whether or not it is a fair representation of what he could see or what was there.

Mr. Fitting: It is just intended, your Honor, to show the general layout of the floor and what could be seen from there. [63]

The Court: Put your next question.

Mr. Townsend: If your Honor would like me to state what I had in mind, it is that from the point he was standing and the point the camera took that picture might be two totally different locations, which would give us a totally different approach.

The Court: The question is: What could be seen from the point where he was standing, point "E"? Was that your question?

Mr. Fitting: Yes; it was, your Honor.

The Court: Proceed.

Q. By Mr. Fitting: Mr. French, there is an arrow on this diagram pointing down to "A"—

The Court: An arrow on the photo, Exhibit 5 for identification.

Mr. Fitting: On the photo, Exhibit 5, pointing down to a rack, is there not?

A. That is a sack rack; yes, sir.

Q. Is that the approximate location of the sack rack on which Government's Exhibit 2 was placed?

A. It is; yes, sir.

(Testimony of Alfred E. French)

Q. And you could see it just as clearly as that from—

A. That is correct.

Q. Now, Mr. French, did you see— [64]

The Court: You mean from point “E”; is that what you are asking? You did not complete your question. You said, “you could see it just as clearly as that from”—where?

Mr. Fitting: From point “E”.

The Court: Point “E”?

The Witness: That is correct.

Q. By Mr. Fitting: Mr. French, did you see Mr. Franzen place Government’s Exhibit 2 on that sack rack in the Pico Heights area at point “A”?

A. I did; yes, sir.

Q. You saw him do that from the lookout?

A. I did; yes, sir.

Q. Then what did you see him do?

A. I then saw him take Exhibits 3 and 4 down the aisle and turn in, turn west at the point of entrance into the Station E.

Q. In other words, you saw him turn to his right in toward the spot on the diagram marked “B”?

A. Yes, sir.

Q. Then did you see him put down the package?

A. I do not recollect noting that point apparently.

Mr. Townsend: I am sorry, I didn’t get the question and answer.

The Court: Read the question and answer, Mr. Reporter.

(Last question and answer read by the reporter.) [65]

(Testimony of Alfred E. French)

Q. By Mr. Fitting: Did you then stay in the lookout shelter, Mr. French?

A. I did, but I changed my position.

Q. And where did you move to?

A. I moved to the back side of point "E", which is perhaps three or four feet, so that I would face north and observe the janitors' closet.

Q. You would be looking towards the north, you say?

A. Yes.

Q. In other words, the opposite direction from which you were looking before? A. That is correct.

The Court: You were looking to a point not shown on the diagram?

The Witness: Yes, sir.

The Court: Exhibit 1 for identification?

The Witness: That is correct; yes, sir.

Q. By Mr. Fitting: Did you then see the defendant Kelley?

A. I saw him, yes, within a short while, about 5:15 a. m.

Q. Where did you see him?

A. I saw him go in the janitors' closet, which is just below and a few feet north of my lookout point.

Q. At a point not shown on our diagram? [66]

A. Yes, sir.

Q. What did he do?

A. He conversed there for a few minutes with—may I say, that at that time I didn't know that he was Kelley, but the man that I later learned to be Kelley I saw then.

Q. The defendant sitting here?

A. That is correct. I saw him conversing with another colored man in the janitorial service.

(Testimony of Alfred E. French)

Q. Then what did the defendant Kelley do?

A. Kelley obtained his broom, walked over to the corner just west of that point.

Q. Just west of what point, Mr. French?

A. Of the janitors' closet.

Q. Still off the diagram?

A. That is right; yes. I saw him take his broom over there and start sweeping.

Q. What direction did he sweep, Mr. French?

A. He swept from the wall that is on the west side of the building, east, out into the aisle.

Mr. Townsend: Will you plot that, if you will, on the diagram?

Q. By Mr. Fitting: Was he sweeping at a place show on this diagram?

A. No. That was in Holly station. which would be just off the diagram. [67]

Mr. Townsend: Just a moment. I am sorry to interrupt. I wonder if we can have the witness just take a pencil and follow the course of Mr. Kelley.

The Court: It is not shown on the diagram, Mr. Townsend, he said.

Mr. Townsend: Oh, we are still up in the other section. I am sorry.

The Court: He swept at a point north of the point shown on the diagram.

Q. By Mr. Fitting: Mr. French, would you point out the place where Mr. Kelley first swept into the diagram?

A. Well, he was sweeping in a rather easterly direction here.

The Court: From the west wall?



(Testimony of Alfred E. French)

The Witness: From the west wall; yes sir. And before he swept the material up into where the diagram begins.

The Court: That would be the northwesterly corner of the diagram, would it. Exhibit 1?

The Witness: Yes, sir. Well, he would have come into the diagram, but it would have been directly under the gallery here. And then he left there.

Q. By Mr. Fitting: When did you see him next?

A. I saw him go around, take the nearest route in order to get to the men's lavatory.

Q. And when did you see him again, Mr. French?  
[68]

A. I followed down the observation gallery to a point where I could observe the lavatory. and I saw Mr. Kelley in there and observed him there for several minutes.

Q. When did Mr. Kelley next appear in the area around your lookout, Mr. French?

A. When he left the lavatory, which was perhaps about 10 minutes later, and he spent about 10 minutes in there.

Q. Approximately what time was that?

A. That would have been about 5:30.

Q. And what did he do then?

A. Then he started sweeping his pile of trash south up to—

Q. Suppose you draw a dotted line in the direction in which he was sweeping his pile.

(Witness diagraming on Exhibit 1 for identification.)

The Court: The witness commenced drawing the dotted line from the point west of the point marked "E" in the upper left-hand corner of Exhibit 1 for identification.



(Testimony of Alfred E. French)

The Witness: That is correct. It should have been—there is a trash pile, of course. I couldn't see it too well underneath the gallery there. It was more like this, along this aisle here. down to approximately this point just south of the southernmost case in the Pico Station.

The Court: That is a point east of the point marked "A"? [69]

The Witness: That is correct; yes, sir.

Mr. Fitting: Suppose you mark that point "X".

The Court: Make it "F". "F" is our next letter.

Mr. Fitting: "F". And I will put a circle around that, your Honor, so it stands out.

Q. What did Kelley do when he got to the point "F"?

A. He came in to this Pico Heights Station section.

The Court: By going west?

The Witness: By going west; yes, sir, approximately southwest. And the first thing that I noted him do was to walk up to the sack rack, which was about at this point here.

Q. By Mr. Fitting: That is just south of point "A"?

A. Just south and west of point—yes; just south of point "A", and picked up Exhibit No. 2.

Q. Now, Mr. French, could you see Exhibit 2 clearly at that time? A. I could; yes, sir.

Q. The lights were on in that vicinity so that it was bright? A. Very clear; yes, sir.

Q. And you say that Mr. Kelley picked up Exhibit 2 from the sack rack? A. That is right; yes, sir.

Q. Then what did he do?

A. He looked at it a moment and then he swung his [70] body all the way around to the right and threw the package in the direction of his trash pile.

(Testimony of Alfred E. French)

Q. Now, you have indicated that he pivoted around to his right and turned a half circle? A. Yes, sir.

Q. And then he threw the package in the direction of the trash pile? A. That is correct.

Q. Did he start sweeping again then?

A. The next thing he did was to push the racks, the sack racks—there were several of them there—up together more compactly, and then he swept that area. Well, first, before sweeping the area, after pushing those racks together, he proceeded to empty two wastepaper baskets there onto his pile of trash, and then obtained some sweeping compound to throw over the pile and then he swept that area out.

Q. That is, he swept—

A. The Pico Heights area.

Q. —the Pico Heights area, that is, the general area?

A. Yes, sir.

Q. In which this mark “A” is?

A. That is correct.

Q. He swept that out towards what, into the aisle?

A. Yes, sir. [71]

Q. Into the pile marked “F”?

A. That is right.

Q. Then what did he do?

A. Then he pushed that pile of trash up the aisle.

Q. Now, when you say “up the aisle” you mean south?

A. South in the aisle.

Q. In the same direction that he had been pushing it before? A. That is correct.

(Testimony of Alfred E. French)

Q. With his broom?

A. Yes; to a point just approximately in this area here, the "Wilshire-LaBrea-Village and West Los Angeles Station" area.

Mr. Fitting: The witness is now drawing a dotted line south down the aisle.

The Court: South from point "F".

Mr. Fitting: South from point "F".

The Witness: Shall we mark that "G"?

Q. If you will. Will you put a circle around that?

A. Yes.

Mr. Fitting: And he has marked a spot "G" slightly above and to the right of the words "VIL-WLA STA"?

Q. Then what did Mr. Kelley do, Mr. French?

A. He then swept out this area which is surrounded by the stations, stations or distribution sections, which [72] you just mentioned.

Q. You mean the area to the west of point "G" on the diagram?

A. Yes. He swept that out to this same pile at point "G". and then he swept that pile south down the aisle and—

Q. Would you mark with a dotted line his course?

A. Yes.

Q. You are now drawing a dotted line south down the aisle from point "G"?

A. Correct; yes, sir. I saw him turn in at approximately the point "H"—I will put a circle around it.

Q. And you have now marked point "H" at a place almost due east of point "B" but out in the aisle?

A. That is correct; yes, sir.

(Testimony of Alfred E. French)

The Court: By "turning in" do you mean turned west toward the wall?

The Witness: Well, he turned west toward the wall; yes, sir.

Q. By Mr. Fitting: He began to sweep the pile in there, did he? A. Yes, sir.

The Court: Had you seen Exhibit 2 for identification from the time you say the defendant threw it toward his trash pile up until this time when he swept the pile in towards the wall near point "B" [73]

The Witness: No, your Honor. I was unable to observe the package in the large amount of trash and papers which were in the pile.

The Court: Did you see it at any time from the time you say the defendant threw it up until the time you saw him turn toward the west wall at the point "H" with his trash pile?

The Witness: No, sir; I did not.

Q. By Mr. Fitting: Mr. French, what happened then?

A. I waited at the observation point "E" for a few moments, and then I telephone Mr. Franzen, the supervisor in charge of the building at the time, and asked him—I told him that the defendant, whom I later learned to be Kelley, had turned in into the Station "E" area at the southwest corner of the building, and instructed him to come out and see if he could find the package which he had placed at point "A". I believe that is "A", isn't it? Yes.

Q. Did you see Mr. Franzen go to the point "A"?

A. Yes. And I forgot to mention, I told him to make a motion as though he were scratching his head if he

(Testimony of Alfred E. French)

could not find the package when he arrived there. So I saw him come into that section and observe closely in every direction from the point where he had left the package, and then he stood there a moment and scratched his head, indicating to me that he could not find the package. [74]

Q. Then what did he do?

A. He then left the section and, as far as I could see, he appeared to return in the direction of the north end of the building.

Q. When did you next see the defendant Kelley?

A. I next saw the defendant about 5:45. I left the lookout gallery and went down through my office and around to the stairway in about the middle of the building, which is—

Q. Are you speaking of this?

A. No; I am not speaking of that, but the area near the tie section, which would be off the diagram and to the north of the point "E".

Q. Then did you go from there to a point on the diagram?

A. I did. I circled around on the third floor there over to the east side of the building, and then south along the floor to a point opposite where the elevator is shown. Stairway No. 1, I believe they call it.

Q. In other words, you came across the floor, moving toward the west until you hit a point just below stairway No. 1?

A. Yes; approximately this point here, from which I could look into the station "E" distribution area here.

(Testimony of Alfred E. French)

Q. Now, Mr. French, would you please mark the point at which you stopped? [75]

A. That would be "I".

Q. "I". Would you put a circle around that?

A. Yes.

Q. Point "I" is in about the middle of the diagram toward the bottom, just below the portion of the diagram marked "ELEV NO. 1" and "ELEV NO. 2"?

A. Yes.

Mr. Townsend: May I interrupt there, please, counsel? I wonder if you would help us out by running a dotted line across? I mean it is a rather round-about way and I am trying to follow it.

The Witness: Well, a portion of it would be off the diagram.

Mr. Townsend: Well, I mean where you hit the diagram. Just start where you got on the diagram.

The Witness: There is a fire path area over here next to the east line of the building.

Mr. Townsend: Indicating the northeast corner of the diagram?

The Witness: That is correct.

Q. By Mr. Fitting: I take it, Mr. French, that you came down on the east side of the diagram somewhere?

A. That is correct.

Mr. Townsend: Just a moment, just a moment, counsel. I object to that as leading. [76]

A. I believe that that would be—I believe that this diagram would probably take in the entire width of the building there. Assuming that to be the case, I came down along through this area here.



(Testimony of Alfred E. French)

Q. By Mr. Fitting: In any event, you came down a place well out of sight? A. That is correct.

Q. From the area we have been discussing?

A. In order that the defendant would not be able to see me.

Mr. Townsend: Just a moment. I am not just clear.

I am trying to find out, if I can, exactly where you came into this diagram, at what point. Will you mark an "X" or something exactly where you came into the picture, into the exhibit?

The Court: In the eastern district?

Mr. Townsend: Anywhere that he first came into this diagram that we have on the board.

The Witness: It is not sufficient to say that I came down the east side of the building?

Mr. Townsend: Yes. But where did you come into it?. Where did you get onto this first floor, at what point?

The Witness: Approximately at this point here.

Mr. Townsend: That is what I am trying to get at. Then follow that course. [77]

Q. By Mr. Fitting: Will you draw a dotted line there to point "I"?

Mr. Townsend: Which "I"? That is what I am trying to get at.

The Witness: This will only be an approximate, because I—

The Court: Let us mark the point, first. What is your next letter?

Mr. Fitting: J.

The Witness: "J". I will circle that.

The Court: The witness has marked a dotted course along toward the easterly side of Exhibit 1.



(Testimony of Alfred E. French)

The Witness: That, as nearly as I can tell from the diagram there, is the direction which I came in.

The Court: You made a dotted line from "J" to "I"?

The Witness: Yes, sir.

Q. By Mr. Fitting: Now, Mr. French, I show you the photograph which has been marked Government's Exhibit for identification No. 6 and ask you whether that is a fair and accurate picturization of what you saw from point "I" on the diagram?

Mr. Townsend: Just for the record, if the court please, I make that same objection as I made with regards to the previous picture. I think the person who took the picture would be the best evidence. [78]

The Court: Ask him if it fairly depicts the scene that he could see at that time when he reached point "I". Is that your question?

Mr. Fitting: Yes, your Honor.

The Court: Objection overruled. You may answer.

A. It does; yes, sir.

Q. By Mr. Fitting: What did you see. Mr. French?

A. I saw the defendant bending over the trash hamper and—

Q. Now, by trash hamper just what do you mean?

A. I mean this canvas tub which is generally used by the janitors in depositing their trash before taking it down to the basement.

Q. Was that the first that you had seen that hamper?

A. No. No; I had seen Kelley before I left the look-out gallery and I—

Mr. Townsend: I object to that, if your Honor please, as not responsive to the question.

A. No. I—

(Testimony of Alfred E. French)

The Court: Overruled. He may answer.

Q. By Mr. Fitting: When did you first see the hamper?

A. I saw the hamper at just before leaving the look-out gallery.

Q. Was that after Mr. Franzen had gone into the point marked "A" to look for the package? [79]

A. After Mr. Franzen had been there; yes. That was—to the best of my recollection, that was after Mr. Franzen was in there.

Q. Where did you see the hamper, Mr. French?

A. I saw the hamper being pushed by Mr. Kelley down the aisle in the direction of the Station "E" area.

Q. Did he follow approximately the same course that you have marked by the dotted line as indicating where he swept the—

A. Approximately that course.

The Court: Do you mean "swept the trash pile"?

Mr. Fitting: Swept the trash pile.

A. He was out of my observation for a moment when he went down to get the hamper. I could not see exactly the point.

Q. Where did he go to get the hamper, Mr. French?

A. He came down the aisle north and turned to approximately past the point "C" and went over toward the northeast part of the diagram.

Q. Now, Mr. French, was this also after he had swept the pile past point "H"?

A. That is correct. The pile had already been put into the Station "E" area.

(Testimony of Alfred E. French)

Mr. Townsend: May I interrupt again, if counsel please, to see if we can make a point where the hamper was before [80] the defendant went to get it? I mean may we have a letter at that point?

Q. By Mr. Fitting: Did you see the hamper before the defendant got it?

A. No; I couldn't see. I couldn't observe the point at which he got the hamper.

Q. You saw the defendant go east past point "C"?

A. That is correct.

Q. And then out of your sight?

A. Yes; he got out of my sight.

Q. When he came back he had the hamper with him?

A. That is correct; yes, sir.

Q. And what did he do with the hamper?

A. He pushed it down the aisle which I have previously made a dotted line.

Q. That is along the course "F-G-H"?

A. As I remember, he came back through the point "C", the same point that he had made his exit to go after the hamper. He came back through there again and then into the aisle and then south to the point—is that "H"?

Q. "H". A. Yes.

Q. And then at point "H" he turned west with the hamper? A. That is correct; yes, sir.

Q. As he had with the sweeping? [81]

A. Yes, sir.

(Testimony of Alfred E. French)

Q. Now, Mr. French, to get back to your standing point "I", observing the defendant, what did you see?

A. I observed him bend over the hamper with his back toward the west wall and he was doing something in the hamper. I could not observe just what he was doing.

Q. Did it look as if he were picking up papers and things?

Mr. Townsend: I object to that. He has answered he did not know what he was doing, if the court please.

The Court: You may ask him what he appeared to be doing. Objection sustained to the question put.

Q. By Mr. Fitting: Did it appear that he was picking up papers and putting them in the hamper?

A. No.

Mr. Townsend: Just a moment. I object to that as leading.

The Court: Sustained.

Q. By Mr. Fitting: What did it appear that he was doing?

A. I can only answer that by saying that he was not putting trash into the hamper; and what he was doing, I don't know.

Mr. Townsend: If the court please, I move to strike the answer. If he does not know what he was doing, he doesn't [82] know what he was not doing.

The Court: The answer is not responsive. The motion to strike is granted. The question is, Mr. French,

(Testimony of Alfred E. French)

what, if anything, did it appear to you that he was doing at that time.

The Witness: I could not say what he was doing, your Honor.

Q. By Mr. Fitting: Would you describe to the court his position?

Mr. Townsend: If the court please, I object to that as having been asked and answered. He said he was in a bending position over the hamper.

The Court: Sustained.

Q. By Mr. Fitting: Then what did the defendant do, Mr. French?

A. He was still in that position at the time I left my point of observation.

Q. How long did he stay in that position?

A. I would judge that he was in that position during the period that I watched him for at least a half a minute. I did not stay there long enough to see when he got out of that position.

Q. In other words, you watched him for a half a minute and during the entire period he was bent over the hamper? [83]

A. That is correct.

The Court: We will take the noon recess at this time until 1:30 this afternoon. You are instructed, Mr. Kelley, to return at 1:30. Court will recess at this time until 1:30.

(Whereupon, a recess was taken until 1:30 p. m. of the same day, Friday, January 31, 1947.) [84]

Los Angeles, California, Friday, January 31. 1947,  
1:30 P. M.

(Case called by the clerk.)

The Court: Are both sides ready?

Mr. Townsend: Ready for the defendant, your Honor.

The Court: Is the defendant present in court?

Mr. Townsend: The defendant is present in court.

The Court: All right; proceed.

ALFRED E. FRENCH (Recalled)

Direct Examination (Resumed)

By Mr. Fitting:

Q. Mr. French, I believe that when we adjourned you had just testified that you had just left the spot on this diagram marked for identification as Governments Exhibit No. 1, the spot marked "I"? A. Yes, sir.

Q. Where did you go?

A. I walked back in an easterly direction.

Mr. Townsend: I am sorry to interrupt. I can't hear you, sir.

A. I walked east from that particular position back toward the easterly wall of the building. I walked down that way and— [85]

Mr. Townsend: Just a moment. "Down that way" indicating which?

Q. By Mr. Fitting: Did you retrace your route from "I" to "J"?

A. That is right; I practically retraced my previous route, except that I stopped in the placing table section or letter distribution area of the floor and sought to get in touch with Mr. Franzen.

(Testimony of Alfred E. French)

Q. Now, Mr. French, when did you come back into the area covered by this diagram again?

A. It would have been about four or five minutes later.

Q. Who was with you?

A. Mr. Franzen and Mr. Kinny.

Q. Where did you re-enter the area covered by this diagram?

A. Well, as nearly as I can remember, we came down through that area "C" down below, right there, and came through there in the aisle and walked up—

Q. That is, you came down through the center of the diagram past the point marked "C"?

A. That is correct; yes.

Q. And at that point you turned westerly?

A. Yes.

Q. And then when you got into the aisle, turned—

A. South. [86]

Q. —southerly and followed him and went southerly along the path that Mr. Kelley had swept?

A. That is correct.

Mr. Townsend: May I interrupt, counsel, and ask him if he will just dot where he entered the diagram and follow his course?

The Witness: I would not be positive as to the exact course from this area here. As nearly as I can remember, we entered the—

Q. By Mr. Fitting: Would you mark where you entered "K"? A. Probably about this point here.



(Testimony of Alfred E. French)

Q. You are now putting the mark "K" on the very top center of the diagram?

A. That is right. And, as nearly as I can remember, before reaching this aisle here we traversed approximately this route here from the point marked "C" and into the aisle, and where we turned south.

Q. When did you next see Mr. Kelley?

A. While on that route I saw him as soon as I reached the area of—is that an "H"?

Q. Yes.

A. Reached the point "H", where I could see into the area.

Q. Into Station "E"? [87]

A. That is correct; yes, sir.

Q. When you reached that point "H" who was with you?

A. Mr. Franzen was directly with me, and Mr. Kinny, I motioned for him to remain behind for a moment.

Q. You motioned to him to remain behind?

A. That is right; and he was just behind us.

Q. What was Mr. Kelley doing when he first came within your vision there?

A. He was just standing there. I don't really remember. I didn't notice whether he had anything in his hand or not.

Q. What did you do then?

A. I walked up to him and asked him where the package was that had been placed on the table.

Q. Did you check to see if the package was there?

A. I had first asked Mr. Franzen where he placed the package, and he showed me where he had placed it on the

(Testimony of Alfred E. French)

table. And I asked Kelley what he had done with the package.

Q. What did Mr. Kelley say?

A. He said, "What package?"

Q. Did you have any further conversation with Mr. Kelley at that time?

A. Well, I would say that there was some conversation. I sent Mr. Franzen back to bring the trash tub into the area there, and in the course of that time, as I remember it, I [88] told Mr. Kelley that there had been a package there and—

Mr. Townsend: Just a moment. I am sorry. I can't hear you again. It is fading out on me.

Mr. Fitting: Would you keep your voice up, Mr. French, please?

A. Yes. And Mr. Kelley and I discussed the package. He disclaimed any knowledge of it and I asked him several—

The Court: What did he say and what did you say?

The Witness: I do not remember the exact words, your Honor.

The Court: The substance of it, the substance of it.

The Witness: The substance was simply that—

The Court: How did you open the subject with him?

The Witness: I insisted that the package had been there and that now it was gone, and that he must have done something with it. And he displayed ignorance—

The Court: What did he say?

Mr. Townsend: I move to strike that clause, if the court please, that "he displayed ignorance".

(Testimony of Alfred E. French)

The Court: Motion granted. We were not there, Mr. French. You have to tell us what happened if we are to know what happened. .

The Witness: He said that he didn't have any package and wondered what I was—and he asked what I meant by a package and— [89]

Q. By Mr. Fitting: Then what happened, Mr. French?

A. I told him that Mr. Franzen had left a package there on the table and now it was gone; there had been no one else in there and that he must know what had happened to the package; and he denied it.

Q. Then what happened?

A. In the meantime Mr. Franzen had gone after the trash tub and he brought it up, and Mr. Kinny who, I believe, was close enough to observe what was going on, at that time came in and I felt of Kelley's clothing to see whether there was any bulk in there to indicate that he had taken any of the articles out of the packages and placed them in his pockets. I also in the course of the conversation had mentioned the package which had been down on the Pico station and which I saw him pick up from the—

Mr. Townsend: If the court please, may I interrupt and move to strike that last portion of his testimony as voluntary?

The Court: Motion granted.

Q. By Mr. Fitting: Mr. French, did you say anything to Mr. Kelley about the Pico package?

A. Yes; I did.

Q. What did you say?

(Testimony of Alfred E. French)

Mr. Townsend: Just a moment. I object to the whole inquiry into the subject as having totally no connection with [90] this case, of what happened in the Pico station at some different time.

Mr. Fitting: If the court please, that is one of the packages covered in this indictment.

The Court: Why don't you identify it?

Q. By Mr. Fitting: Did you ask Mr. Kelley about the package which has been marked for identification as Government's Exhibit 2? A. I did.

Mr. Townsend: Just a moment.

Q. By Mr. Fitting: What did he say?

Mr. Townsend: Just a moment. That is objected to. First, the court will recall he spoke of some package at some Pico station and—

The Court: Is this the package, Exhibit 2 for identification, which you have referred to as the "Pico package"?

The Witness: That is correct; yes, sir.

The Court: They are one and the same package, evidently, Mr. Townsend. Motion denied.

Q. By Mr. Fitting: When you spoke of the Pico Station, Mr. French, do I understand you to mean this area marked "A" here?

Mr. Townsend: Just a moment. I would like to ask the witness a question on voir dire, your Honor.

The Court: Yes; you may. [91]

Q. By Mr. Townsend: Is this dealing with the same day and time? A. That is correct; yes.

Q. Did this transaction take place at the Pico Station—where did this whole transaction take place?

A. This is a part of the conversation at the—

(Testimony of Alfred E. French)

Q. I am asking you now if this transaction that we have before the court on this diagram—is this a diagram of the Pico Station?

A. A portion of it is, the part marked “A” is the Pico Station area.

Q. That is the Pico Station area in this Terminal Annex Building?      A. That is correct.

Mr. Townsend: I see what you mean.

The Court: By that, you mean that is where the mail goes that is destined for delivery in the Pico Street district?

The Witness: Yes, sir.

The Court: In the City of Los Angeles?

The Witness: Correct; yes, sir.

Q. By Mr. Fitting: Mr. French, you said that you asked Mr. Kelley about that package which has been marked for identification as Government Exhibit 2. What did you ask him?

A. I asked him what he did with the package that he had [92] taken from the sack rack.

Q. What did he say?

A. He said that—he denied having taken any package there and said he didn’t know what I was talking about.

Q. Then what happened?

A. By that time Mr. Kinny and Mr. Franzen were right there along with Kelley and myself and the trash tub, and I reached into the trash to see if I could find the packages in it and could not do so at first; and so we decided to turn the hamper upside down and dump all of the trash out onto the floor, and we first found this package in it.

(Testimony of Alfred E. French)

Q. That is Government's Exhibit 2?

A. Exhibit No. 2. And then I think Exhibit 3 was the one that we found next, and then we found the wrapper, or it might have been vice versa, they were found so nearly or close to each other in point of time.

Q. When you found them were they in the same condition—

A. That they are now?

Q. As they are now?      A. That is correct.

Q. Now, Mr. French, let us go back to the time when you were in the observation gallery. Did you see anyone go into the general area that is marked on this diagram as "A" between the time that Mr. Franzen went in and put the [93] package there and Mr. Kelley came in and threw it out?

Mr. Townsend: Just a moment. I would like to ask that question be read. I don't get all of it before he answers.

The Court: Please read the question, Mr. Reporter.

(Question read by the reporter.)

A. No one then.

Q. By Mr. Fitting: Now, Mr. French, did you see anyone go into the area marked "A" on this diagram in the period between the time that Mr. Kelley threw the package out and Mr. Franzen came in the second time to see if it was there?

A. Yes, sir. There were—

Q. Who did you see go in that area?

A. There were three or four mail handlers who came in there for the purpose of hanging sacks on the rack.

Mr. Townsend: Just a moment. I move to strike that from the word "purpose". He saw three or four mailmen come in.



(Testimony of Alfred E. French)

Q. By Mr. Fitting: What did they do?

The Court: Motion granted.

Q. By Mr. Fitting: What did they do, Mr. French?

A. They commenced the process of hanging sacks on the various racks a little farther over from the point marked "A" toward the wall. They were not at any time in the immediate vicinity of the point marked "A".

Q. Now, Mr. French, in all the time that you were [94] watching did you see anyone go into the area, the general area, around the spot on this map marked "B" other than Mr. Kelley? A. No, sir.

Mr. Fitting: That is all.

#### Cross Examination

By Mr. Townsend:

Q. Were you in attendance in the lookout from the time you first saw Mr. Kelley converse with some gentleman whom you did not identify to the time that you finally came down and around to see Mr. Kelley?

A. I beg your pardon? You are speaking of the gentleman he was conversing with when he first came on the floor?

Q. Your testimony was that when you observed Mr. Kelley he was conversing on the north side of the diagram with someone whom you did not identify.

A. Yes; that is correct.

Q. I am questioning you now as to whether you were standing at that particular position in the lookout, is that correct? A. Yes; that is correct.

Q. I am asking you did you stand at that point of lookout continuously from that time down to the time



(Testimony of Alfred E. French)

when you left to come around to the point to what I believe is "I"? [95]

A. No; I did not. I followed the defendant by moving from point to point in the observation gallery.

Q. Approximately how long were you up in the lookout?

A. I was up there, I would say, about 35 minutes.

Q. You stated that when you first saw the gentlemen conversing, you in fact did not know who they were, as I recall it; and that you saw two men conversing, one of whom you later found to be Mr. Kelley, I think you used the words; is that your testimony?

A. That is correct; yes.

Q. When did you later find this gentleman to whom you refer to be Mr. Kelley conversing previously?

A. When did I find him to be Mr. Kelley?

Q. That is right.

A. Not until I started to questioning him, and I believe that I spoke to him as Kelley, because I assumed that that was who it was.

Q. You assumed that that was who it was?

A. Yes.

Q. I see. You at no time called Mr. Kelley's name at the time that you were in the lookout?

A. Called his name?

Q. Yes; from where you were in the lookout. You didn't call out to him, did you?

A. Oh, no. [96]

Q. He answered by no name?

A. That is correct.

Q. And your first personal identity of Mr. Kelley was at some 30 to 40 minutes later, when you had come back out and gone around this course that you drew on the

(Testimony of Alfred E. French)

diagram and then around to the point beyond; is that the first time that you saw a man that you identified as Mr. Kelley?

A. Well, as a matter of fact I didn't know that he was Mr. Kelley until he signed his name to a statement. I never asked him if his name was Kelley.

Q. He has been there for some years, hasn't he?

A. I don't know—yes; he has.

Q. You knew Mr. Kelley personally before this occasion, didn't you?

A. No. I beg your pardon. I had never seen Mr. Kelley before as far as I know.

Q. When did you first find out that the defendant—that the name Kelley was the person to whom you saw conversing previously with another man that you did not identify? A. I don't understand what you mean.

Q. I mean when did you know that this gentleman, the defendant, regardless of his name, was the same gentleman that you saw from the lookout talking to someone that you did not identify?

A. Well, I followed his movements and I recognized the [97] man who picked up the package and worked there in the area and the man that I finally accused as all being one and the same man, regardless of his name.

Q. What, then, did you take into consideration as points of identification as being the same man that you had previously seen?

A. Well, the fact that he was short and heavy-set, and I had heard him singing underneath the observation gallery and his voice was similar to that with which he spoke when I accosted him in Station "E" area.

Q. You heard the music, also? A. Yes; I did.

(Testimony of Alfred E. French)

Q. Had you previously heard music from that position?

A. I think that is the first music I ever heard from that position.

Q. So you heard from the point that you heard the music; it came from directly under you, didn't it?

A. Not directly, no; off to one side there a little bit in the corner of the building which I could observe.

Q. At the time that you heard singing could you see who was doing the singing?

A. I could when he first started singing.

Q. I think you testified that when this gentleman came out of the lavatory and went toward this northwest corner and began to sweeping, you lost sight of him from the time he [98] left the lavatory until he reappeared on this side of this lookout, is that right?

A. Yes, sir. It is impossible to observe for the entire route around to the toilet.

Q. How would you estimate the distance of your lack of observation; how wide would you consider the area, I mean, beneath that you could not see between the two points?

A. Well, I haven't much of an idea on that. I don't imagine it would be more than 45 feet around there.

Q. So there was 45 feet from the time you saw him at the north side of the lookout until you saw a man again on the south side of the lookout; is that your estimate?

A. I don't know exactly what you are driving at. I saw him under the lookout and I saw him in the lavatory, and part of the distance between the lavatory and the

(Testimony of Alfred E. French)

point where I could observe him from the lookout there is a blind distance there of about 40 feet, 45 feet maybe.

Q. You saw a short and slightly fat man on the north side of the lookout, is that right?

A. That is right; yes.

Q. And then you later saw a short and slightly fat man on the south side of the lookout, is that correct?

A. I did later; yes.

Q. At two points that were at least 40 to 45 feet apart, is that correct? [99]

A. Yes.

Q. And while this man that you saw was on the north side did you at any time know who this short fat man was?

A. I only knew that it was he. I didn't know his name.

Q. Did you know the person?

A. I knew him by sight, certainly.

Q. How did you identify the person that you saw on the south side?

Mr. Fitting: If the court please, I think Mr. French has already answered how he knew it was the same person.

The Court: Have you finished your question?

Mr. Townsend: I had not, your Honor.

The Court: Wait until the question is finished.

Q. By Mr. Townsend: Now, the question is: How did you know, that is, what was your basis of identity—

Mr. Fitting: If the court please—

Mr. Townsend: I haven't yet finished the question, counsel.

Q. What is the basis of your identity of the man you later saw on the south side, 45 feet south, that gave to

(Testimony of Alfred E. French)

you the conclusion that it was the same man that you had seen 45 feet to the north?

The Court: Is there objection?

Mr. Fitting: Yes, your Honor. If the court please, I think Mr. French has already answered that question. [100]

The Court: Overruled. He may answer.

A. Well, his clothing and his height and the fact that he appeared to be a custodial cleaner by his actions.

Q. By Mr. Townsend: Describe his clothing, the man to the north of the lookout.

A. Well, you mean the man on both sides. The man on both sides had the same clothing on.

Q. As a matter of fact, every custodial worker has the same uniform, don't they?

A. No; they don't. The man that came up there in that janitorial closet with him had on khaki trousers. Kelley had on blue denim trousers.

Q. You do not have a regulation required uniform that these men in this custodial staff have to wear?

A. No.

Q. Do you have any custodial workers that are low or short in size?

A. Well, there may be some. I am not a custodial supervisor. I would not know about that.

Q. Did you see more than one custodial worker on that job that night through the building?

A. I saw only that night—

Q. That night.

A. You mean that morning. I was asleep during the night. Do you mean that morning at 5:30? [101]

(Testimony of Alfred E. French)

Q. That morning at 5:30.

A. I saw the—the only two that I saw were Kelley and this man in the khaki trousers.

Q. Are there any lights up in this lookout where you were?      A. Any lights?

Q. Lights up inside of the lookout where you were?

A. No. It is pretty dark in there.

Q. Pretty dark. And how much is the area of peeping or looking space that you see through?

A. Well, the slits are, I would say, a half inch wide or thick and about six inches long, and there are a number of those spaced along at, perhaps, two-foot intervals clear along this wall which is shown on the diagram.

Q. What is the number of feet down from the bottom of the lookout to the floor?

A. Well, I am sorry. I don't know that I can give you those dimensions.

Q. Could you estimate it?

A. I would estimate it as being possibly 10 feet.

Q. How far would you estimate the distance to be from the end of this lookout to the west wall, from the west end of the lookout at point "E" to the west wall?

A. I would estimate that to be about 42 feet.

Q. Where is this lavatory? In what general direction [102] north of the diagram is this lavatory located?

A. It is back up here in the northwest corner.

Q. North of the lookout or south of the lookout?

A. Well, you take the lookout and you would go north along the lookout there in order to be able to observe into it.

Q. Is there a seeing opening at the extreme end of the lookout?      A. Yes.



(Testimony of Alfred E. French)

Q. That is one across this end that you can look directly this way? A. That is correct; yes.

Q. I wish you would come and indicate as nearly as you can where the next openings are that you look through.

A. There are openings all along this dotted line here.

Q. Approximately how far are they spaced apart?

A. Perhaps two feet apart.

Q. Two feet apart. Now, in which of the openings were you looking through when you saw a gentleman conversing with another on the north side of the lookout?

A. I believe that would have been right around the corner here, rather than directly across. It was right around the corner here. In fact, I remember looking in that direction on the diagram to look down on that closet. [103]

Q. Don't you know directly the exact window through which you were looking?

A. I looked in all those windows along, just at times, within just a few feet.

Q. I am speaking now of the particular one that you were looking through when you saw two men conversing before going to the lavatory.

A. I would say the one right around the corner there. I believe that is the one; or, as a matter of fact, I think they both look onto that closet.

Q. Now, pointing to this, what does this diagram here represent on the floor?

A. Those are paper and package distribution cases along there, as shown in the photograph.

Q. Calling your attention to the north end of the distribution case identified as Station "H", how far in the



(Testimony of Alfred E. French)

number of feet from this point to the end of the lookout would you estimate?

A. I would say that would probably be about 14 feet.

Q. About 14 feet. And you stated that the looking windows are approximately two feet apart, is that right?

A. I would think that would be about it; yes.

Q. Are they about equidistant on both sides?

A. Yes.

Q. Assuming that to be the fact, you would estimate [104] that would be approximately seven windows along the north side of the lookout between these two points, that is the point "E" and the point indicated at the north end of station "H"? A. Around that; yes.

Q. Now, of those seven windows can you identify any one of the seven that you were looking through at the time you saw the two men conversing, assuming that there are seven?

A. Well, I would say probably it would have been the first window right around the corner on the bend there.

Q. Is there a bend inside the lookout or does it run directly straight?

A. No; it makes a broad right-angle there that you have to follow down to get to the lavatory.

Q. I notice from this diagram it seems to run directly across east-west.

A. It does up to that point, the point—is that an "E" there?—and at the point "E" it makes a right-angle turn.

(Testimony of Alfred E. French)

Q. How do you enter to get into the lookout, from the way you enter? Where did you enter the lookout itself?

A. I entered the lookout from our office, the inspectors' office.

Q. Which would be approximately where with reference to the diagram or north of the diagram? [105]

A. Well, it is a long ways from there. You have to make several bends and go around quite a long corridor from our office. It would be, however, facing the Union Station plaza on the second floor.

Q. Now, at what point do you enter into the inside of the lookout that you actually get up into the thing?

A. As soon as we get out of the office we are in the lookout.

Q. I beg pardon?

A. As soon as we get out of the office we are in the lookout.

Q. I mean with reference to the diagram. I am trying to get a point now where you first entered here on this diagram here. This is the line that indicates the lookout all the way across, isn't it? A. Yes.

Q. You come to this point here to do your observation. is that correct? A. The point "E".

Q. Approximately the point "E"?

A. That is right.

Q. Where did you enter it before you moved to the point "E" on the inside of the lookout?

A. Well, that would have been some place down in this area here on the second floor. As I say, you have to go up [106] several different corridors to get up there to

(Testimony of Alfred E. French)

the third floor and made a very circuitous route around there to get here.

Q. This much of it is all on the third floor, isn't it, from this point along to the point "E"? A. Yes.

Q. That is, from a point at the northeast corner of the diagram to point "E", that is all on the third floor, is that right? A. That is correct; yes.

Q. When you got into this third floor part of the lookout where did you enter, at what point on the diagram did you enter?

A. Well, that goes right up continuous from the first and the second, first, second and third floors; and the point that I entered that would be right above the inspectors' office, which is about halfway down in the front of the building.

Q. I wonder if you can just take your pencil and mark where you entered the lookout on the third floor? That is all we are driving at at this point.

The Court: On that portion which is shown on the diagram.

Mr. Townsend: Before you come to the point "E".

A. It would have been around here approximately. [107]

The Court: I do not believe you understand it.

Mr. Townsend: I do not think he does.

The Court: What part of the lookout is shown on that diagram? What is the total part of the lookout which is shown there? Is it all there at the top of the diagram?

The Witness: This is all lookout here, your Honor, from here on around here and up this side here and across; that is all the lookout area.

The Court: You are referring to—

(Testimony of Alfred E. French)

The Witness: I think the place where I entered would be about here, where we come up from the—

The Court: That is in the lower center toward the east side?

The Witness: That is right; yes, sir.

The Court: Will you mark that?

Q. By Mr. Townsend: All of this is third floor; all of this represents third floor lookout, is that correct, up to this corner and then right? A. Yes.

Q. All that is third floor lookout?

The Court: What is that writing between the two lines there?

Mr. Fitting: It says "observation".

Mr. Townsend: "Observation lookout."

Q. So this does represent all the third floor? [108]

A. That is all the third floor; that is right.

Q. What we are trying to get at now is what point are you positive of that you entered and got into that.

The Court: Third floor lookout, is that your question?

Mr. Townsend: That is right.

A. It would have been right about here, because our office is approximately here on the south side of the Terminal Annex Building.

The Court: Do you wish that point marked, counsel?

Mr. Townsend: Yes, sir. I was trying to get exactly where he entered the third floor part of the lookout.

The Court: Please mark the point, Mr. French.

The Witness: You see, this does not show the lookout running from the second to the third floor.

Q. By Mr. Townsend: But where it reaches the third floor is the point I would like to have you mark, at the point where you entered on the third floor.

(Testimony of Alfred E. French)

May I have your pencil, please? I had better not mark that with a pen. I wonder if we could call the building superintendent and have him point it out on the map?

Mr. Fitting: If the court please, I can't see what possible relevancy or materiality it has where he entered the lookout first.

The Court: Please mark as best you can, Mr. French, where you came into the third floor lookout. [109]

The Witness: I was approximately there, your Honor.

The Court: What letter did you put there?

The Witness: The letter "L", your Honor.

The Court: That is east of the stairway?

The Witness: That is right.

The Court: In the lower center part of the diagram, is that correct?

The Witness: Yes, sir.

Q. By Mr. Townsend: After entering here what course did you take—to the west?

A. When I first went up there at 5:10 in the morning?

Q. That is correct. A. Yes.

Q. Then which direction?

A. I believe that course would be westerly and then over near the side of the building and then northerly to the top of the diagram and then westerly to point "E".

Q. Now, would you estimate the number of feet there is from this point where you entered? Is this a letter—

Mr. Fitting: "L".

Q. By Mr. Townsend: At the letter "L" to the west wall—this is the east wall—to the east wall. Just estimate the footage from where you entered until the point at the east wall.

A. Well, I would say that would be about 50 feet. [110]

(Testimony of Alfred E. French)

Q. About 50 feet. Would you estimate the distance from this point at the west wall to this point at the north wall, indicating the northeast corner of your diagram?

A. Well, probably about 70 feet or so.

Q. Then would you estimate the approximate total distance from this point to point "E"?

A. I would say that would probably be around 90 feet.

Q. 90 feet. 50, 70, and 90, is that correct? Is that your estimate?

A. I would estimate it at that; yes.

Q. Then you walked, after you entered the third floor lookout, approximately 210 feet before you reached a point "E", is that correct?

A. If that is the addition of those figures, that would be about correct.

Q. That is your estimate, adding them together?

A. Yes.

Q. What time exactly, if you can recall, did you enter the lookout on the third floor at point "L"?

A. About six minutes after 5:00.

Q. Six minutes past 5:00?

A. Six or seven minutes past 5:00, yes; immediately after Mr. Franzen left my office.

Q. Do you have any recollection as to why that would happen to be the hour? [111]

A. Yes; I have. I had left word with the guard to wake me up at 5:00 o'clock that morning and instructions for Mr. Franzen to call up my office at five minutes after 5:00. Rather, I was awakened at a quarter of 5:00 and Mr. Franzen here called at five minutes after 5:00.

Q. Do you sleep in the building?

A. I did that night.



(Testimony of Alfred E. French)

Q. And you were awakened at five minutes past 5:00?

A. I was awakened at a quarter of 5:00.

Q. And when did you have this conversation with Mr. Franzen about these packages before he put them at points "A" and "B"?      A. At five minutes after 5:00.

Q. At five minutes past 5:00, is that correct?

A. That is right.

Q. And then at 5:06 you were on the third floor lookout?

A. Well, it didn't take long to give him those instructions, a couple of minutes and I gave them to him; yes.

Q. How far would you estimate the distance from your office to the point of entrance of the third floor, point "L", in terms of feet?      A. Probably about 15 feet.

Q. About 15 feet. I think you testified that you [112] reached the point "E" at exactly 5:10, is that right?

A. I am quite sure I did not say "exact". I said, "about 5:10."

Q. How long was it from the time you saw—strike that question a moment. From where you stood at point "E" could you see on the inside of the lavatory?

A. No; not from point "E".

Q. That is, you could only see people on the outside of the door of the lavatory?

A. I could not see the lavatory there from point "E". I told you a while ago you had to go around a blind distance.

Q. Does this lookout go up farther to the north than the diagram?      A. Yes.

Q. Where does it extend, approximately?

A. It extends from point "E" directly—

(Testimony of Alfred E. French)

Q. Oh, it turns the corner here and goes north?

A. That is right.

Q. Is that correct?           A. That is correct.

Q. I see. You turn the corner and then you can look directly at the lavatory door?           A. That is right.

Q. Is that correct?           A. Yes, sir. [113]

Q. But at no point can you see inside of the lavatory?

A. Oh, yes. After we get up there to where it looks into the lavatory, we can see into the lavatory. I saw Kelley sitting there for 10 minutes, approximately.

Q. Inside of the lavatory?           A. That is correct.

Q. Approximately how many feet from that point is the lavatory, that is, from where you can see from this lookout to the lavatory door?

A. I would say it is about 20 feet.

Q. And this lookout runs directly into and over the actual inside of the lavatory?           A. That is correct.

Q. Is that right?

A. It runs right through the lavatory, so to speak. You can see the east side of the lavatory from the point that the lookout runs through.

Q. When you saw the two men conversing, will you identify the other gentleman to whom this short, fat gentleman was talking?

A. I can't identify him. I don't know his name, any more than I knew Kelley's name at that time. He had on a pair of khaki trousers. He was a colored man, fairly young, probably about 25 to 30 years old.

(Testimony of Alfred E. French)

Q. And did you observe the course that he took after [114] the conversation?

A. No; I didn't, because he left, except in leaving there. He either went north in leaving the janitors' closet, but where he went I would not know.

Q. Did he go completely out of your view as he turned north?

A. I believe he did; yes.

Q. And you at no time saw him again?

A. No.

Q. You do not know which way he went?

A. Well. I say, he was going north. That would have been away from me, and I never saw him again.

Q. Did you see him at any time later that morning during this transaction, this other gentleman?

A. No, sir; I never did.

Q. You say that Mr. Kelley while under the lookout, after having come out from the lavatory, was singing, is that right?

A. He was singing during a portion of the time that he was working in there.

Q. Could you identify what he was singing?

A. No.

Q. Could you identify the tone quality of his voice?

A. Well, I am not much of a connoisseur of singing, so I wouldn't be able to say as to the quality. [115]

Q. Do you know a tenor from a baritone or a bass?

A. Well, generally speaking, an exaggerated bass, I would probably know he was a bass and not a tenor.

Q. Among these voices that you heard, would this be a tenor, a baritone, a bass, or what else did you hear?

A. It sounded pretty bass to me.

(Testimony of Alfred E. French)

Q. It sounded pretty bass to me. When the short and slightly fat gentleman later came into your view at the south side of the lookout was the singing still continuing?

A. Well, I had heard the singing over there in the corner. I think he may have sung later on. I am not sure about that.

Q. You don't know whether you heard him or not?

A. No. I was positive of the identification. It was not necessary to depend on my ear.

Q. What was the basis of your being positive at that point of your identification?

A. Because I had, with the exception of the short blind distance, I had followed him into the lavatory, allowing him time to reach the lavatory, and when he left the lavatory I saw him and gave him time to reach the vicinity of the janitors' closet again, and the same man appeared.

Q. Where is this janitors' closet located with reference to the lavatory?

A. It is located between the top of point "E" at the top of the sketch, and between there and the lavatory. [116]

Q. Is it north or south of the lavatory?

A. I would say that it would be southeast of the lavatory.

Q. Of the lavatory? A. Of the lavatory; yes.

Q. What direction does the door of the lavatory face?

A. I believe that the lavatory would face the east.

Q. Face the east. Now, did you see, after he went to the janitors' closet, what he got out of it, or did you see him get anything out of it?

A. Yes; he got his broom out of it.

Q. He got his working tools? A. Yes.

(Testimony of Alfred E. French)

Q. And among which was a push broom, was it, or did you see what the tools were?

A. I didn't pay much attention, to tell you the truth, just what he did get, except that they were both handling cleaners' tools in there.

Q. You didn't pay much attention to the tools that were in the hand? A. That is right.

Q. And you went there particularly for the purpose of watching him, didn't you? A. Yes.

Q. And yet you made no notice what was in his hands [117] at that time?

A. I was not interested in what was in his hands at that time. I was only waiting until he got here to the area where the package was to see what he would do with it.

Q. You were particularly interested in seeing the package in his hands, is that right?

A. The package was there and if he wanted to take it, that was up to him.

Q. It was put there for the purpose?

A. Any one could have picked it up.

Q. What was the purpose of the package being put there?

A. We had had a number of losses in the area, and having heard quite a bit about the reputation of this man—

Mr. Townsend: Just a minute. I move to strike that, if the court please.

Mr. Fitting: If the court please, he asked for it.

The Court: Motion denied. You asked him his reasons. Now, he may talk all afternoon on his reasons.

Mr. Townsend: Proceed.

(Testimony of Alfred E. French)

The Court: Unless you wish to withdraw the question.

A. Our men had been watching Kelley for sometime, and under very suspicious circumstances, and told me that they suspected him. And we had found packages disappearing from these areas on the third floor after Mr. Kelley had [118] worked in there and—

Q. By Mr. Townsend: Now, explain exactly what were those circumstances upon which—

The Court: Have you finished your answer?

The Witness: No, sir.

Mr. Townsend: Proceed.

The Court: Finish your answer.

A. We also heard of a case where Kelley had swept a package of butter up into his trash hamper out in the back of the Terminal Annex, as witnessed by Mr. Turner, a railroad employee, who has given a sworn statement to that effect. We had heard a number of those instances and for that reason, naturally, we were wondering if he might not have something to do with these packages that were disappearing.

Q. By Mr. Townsend: Now, having heard of all of these things—

The Witness: Pardon me. I am not through yet.

Mr. Townsend: Proceed by all means.

A. We have statements from several building guards who have seen Kelley leave the building from various public entrances at different times, which was directly contrary to the instructions to employees. They are supposed to enter the building and leave the building through the employees' entrances. And Kelley carried packages with him, and it looked like if those were legitimate pack-



(Testimony of Alfred E. French)

ages and belonged [119] to him, that he would have used the employees' entrances and exits. He did not carry them in to the building; that is, he was never seen carrying those packages in, but he carried packages out.

And we had another report of a man who came to the door of the janitors'—what we call swing room or recreation room in the basement of the building and saw Kelley standing in front of another man's locker, and it appeared to this man that, since Kelley was not in front of his own locker and there was no one else in there, that Kelley was probably trying different lockers to see which ones were unlocked and he could get into. I think that is all.

Q. Have you finished? A. Yes.

Q. You searched Mr. Kelley, didn't you?

A. I did not search—yes; I did.

Q. What did you find that belonged to the Government? A. Nothing.

Q. You also searched his locker, didn't you?

A. I did find something. Do you want everything I found?

Q. Everything that is in evidence.

A. You don't want all the things that were found in his pockets?

Q. You searched him at this time of this transaction [120] here, didn't you? A. Yes.

Q. You also searched his locker immediately following, didn't you? A. Yes.

Q. You also went to his home and searched his house, didn't you? A. No.

(Testimony of Alfred E. French)

Q. You had some representative to do it, didn't you? Did you not instruct someone who did search his house?

A. I don't know. That would be drawing a conclusion if I said that, because I don't know what happened.

Q. Did you instruct anyone to go search his house?

A. No.

Q. Did you know of anyone who did search his house?

A. No.

Q. Since the day of his arrest? A. No.

Q. Do you have any report as to it having been searched and having found nothing?

A. I asked a couple of our men to go out and see his girl friend, that is, a person reputed to be his girl friend and see if—

Q. Was that his house? A. Her house. [121]

Q. No. His house is what we asked you.

A. Well, they did go to his house to see if his wife—

Q. They did go to his house?

A. To indicate whether he had brought any of this stuff home.

Q. Did they demand any access there at his home?

A. They didn't search the place.

Q. His wife welcomed the men, did she not? You got that report, didn't you?

A. Well, I understand the people were very courteous. I don't know whether they were welcomed in or not.

Q. In fact, they were unusually courteous, leading them through the house, were they not?

A. I don't know about that.

Q. And they came back with empty hands, is that correct? A. Well, I didn't see them.

(Testimony of Alfred E. French)

Q. Have you seen anything that they brought back here from Mr. Kelley's house? A. No.

Q. Out of all these fancy rumors and reports that you got, have you at any time ever—

Mr. Fitting: If the court please, I think the question is argumentative.

The Court: He has not completed his question, Mr. Fitting. Complete your question. [122]

Q. By Mr. Townsend: I say, in the light of all these detailed reports that you got, placing Mr. Kelley under suspicion, have you at any time ever—and I think he has been there seven years, hasn't he? A. Yes.

Q. Has he at any time during that seven-year period, has he ever been found wrongfully possessing Government property. to your personal knowledge?

A. I have never found it.

Q. That is the question. Have you found any?

A. That is a different question. I haven't been there very long.

Q. How long have you been there?

A. Since about last August.

Q. Have you seen him with any Government property since last August, since you have been there?

A. I didn't know Kelley.

The Court: Have you seen him since last August possessing Government property? Is that the question?

Mr. Townsend: That is the question.

The Court: Prior to this occasion?

The Witness: No, sir.

(Testimony of Alfred E. French)

Q. By Mr. Townsend: When did you hear all these rumors and reports that you mentioned?

A. At various times preceding the 21st of December, [123] at various dates.

Q. I see. Now, do you mail butter through the mail?

A. During the butter scarcity there was a considerable amount going through the mail.

Q. By the way, who did you say prepared these two packages, Exhibits 2, 3 and 4?

A. Postal office inspector Shore and my secretary, Mr. Surdam, and myself.

Q. I am sorry. Proceed. I didn't mean to interrupt you.

A. And myself.

Q. What contents, if anything, were placed in them at the time they were prepared?

A. Well, there was a pair of socks placed in one of them and one or two handkerchiefs placed in the other.

Q. And who addressed them?

A. Mr. Surdam addressed this Exhibit 3 and Mr. Shore addressed Exhibit 2.

Q. I see. Which is Exhibit 3? That went to Mrs. Johnson?

A. This is that wrapper.

Q. Now, who addressed that one?

A. Mr. Surdam, my secretary.

Q. And the one addressed to Mrs. A. S. Cluff, who addressed that one? [124]

A. That was addressed by Mr. Surdam.

Q. And they were prepared in the office?

A. Yes, sir.

(Testimony of Alfred E. French)

Q. What was the purpose of their being prepared?

A. Well, the purpose was to try to determine who was stealing these parcels on the third floor of the Terminal Annex.

Q. The purpose was to determine who was stealing parcels?  
A. Yes.

The Court: Mr. Townsend, you may be under a misapprehension that the witness has answered as to who addressed Exhibit 2, but I do not believe he has.

Q. By Mr. Townsend: Which is the paper? 3 and 4 are together. Which is 3, the paper or the box?

A. The one on the top.

Q. I think the paper with the address on is 3. I believe the question is who addressed that paper that was around 4.  
A. Yes. That was Surdam.

Q. No. 4 was wrapped in with Exhibit 3, wasn't it?

A. Yes.

The Court: The answer is: Mr. Surdam addressed that one.

Mr. Townsend: Mr. Surdam. [125]

The Court: Who addressed Exhibit 2?

The Witness: Mr. Shore.

Q. By Mr. Townsend: Mr. Shore?

A. Yes, sir.

Q. And back of the purpose of their being prepared was to determine who was stealing parcels, is that right?

The Court: Your answer?

The Witness: Yes.

Q. By Mr. Townsend: Was that the sole purpose?

A. Yes; it was.

Q. No other purpose whatsoever but that, is that right?  
A. That is correct.

(Testimony of Alfred E. French)

Q. You had no intention, then, of mailing them for the purpose of actually sending them anywhere at all?

A. They were mailed. They were duly mailed and addressed and the return address—rather, the addressees are living people, and if they had gone through they would have been given to those people.

Q. But they were mailed and they were addressed with no purpose of reaching the addressee at all, were they; it was only to determine who was stealing parcels?

A. Well. I would not say that. There would have been a purpose in them reaching the addressees if they were not taken before that. The purpose would have been for them to [126] reach the addressees. That was the prime purpose, to see if they would reach the addressees.

Q. Your testimony was that that was the only purpose, was to find out who was stealing parcels, is that right?

A. Well, I am sorry, but when you begin to get technical on it, then I have to tell you that there was a purpose for these articles to reach the addressees.

Q. Were there return addresses on them?

A. Yes.

Q. Who were the supposed senders?

A. Do you want their names?

Q. Please.           A. C. S. Heaven.

Q. C. S. who?           A. Heaven, H-e-a-v-e-n.

Q. Who is C. S. Heaven? Is he a real person or a fictitious person?           A. He is a real person.

Q. Who is the addressee on there? Call that name, if you will.           A. Mrs. E. Johnson.

Q. Is she a real person or a fictitious person?

A. A real person.



(Testimony of Alfred E. French)

Q. Was she a personal acquaintance, the addressee of that package, or know anything about the transaction? [127]

A. She was an acquaintance of one of the group. not of myself.

Q. Whose acquaintance was she?

A. I think she was probably an acquaintance indirectly of possibly Inspector Shore.

Q. An acquaintance, not directly, possibly, of Inspector Shore. Do you know or did you not know who she was acquainted with?

A. I didn't personally know, except that she was known to the extent that it was known to be a good living person and a good address.

Q. And someone just decided to send her some Christmas presents, is that right?

A. Well, whatever you would call it.

Q. You were there and we were not. Just tell us what happened, who was going to send her some Christmas presents. Whose friend was she that intended to get her some Christmas present? This is Christmas season, Christmas mail.

A. They were being sent by the persons whose names I have already given you.

Q. Was the contents of the package purchased as a Christmas present for somebody?

A. That is correct; partially out of my money.

Q. Who purchased them?

A. Inspector Shore and myself. [128]

Q. With your money? A. Yes.

(Testimony of Alfred E. French)

O. And you bought a Christmas present for someone whom you admittedly do not know?

A. That is correct.

Q. Now, you followed the trail of the gentleman who was sweeping south, is that right? A. Yes.

Q. Do you know what the method is in the accumulation of trash when janitors are sweeping, that is, whether they pick it up at intervals or whether they carry the pile until it accumulates at the end of the aisle section where they are sweeping?

A. Well, that is something that would not be constant. Different people would handle that in different ways.

Q. What happened in this case?

A. In this case it was swept all the way up the aisle, some 50 or 55 feet, and then around the corner into this area here, before any effort was made to obtain a hamper to put it in.

Q. And the pile, of course, accumulated and got larger as it went along, is that right?

A. It very likely did; yes.

Q. Well, you are looking at it. It did, didn't it?

A. Surely. [129]

Q. He also emptied one or two trash baskets on that pile, is that right?

A. Well, two at that one point and more as he went along.

Q. You saw him pick up two, is that correct?

A. I saw him pick up two at that particular point "A".

(Testimony of Alfred E. French)

Q. You were at point "E" all the time, is that right?

A. Yes. And I mean he picked up two baskets in the Pico Heights area.

Q. In the area of point "A" he picked up two baskets?  
A. Yes.

Q. Now, did you have any particular suspicion when he picked up the two baskets and threw them onto the pile, that is, did you think he was going to steal the baskets?

A. Well, you ask for my suspicion. I knew he was possibly doing it in order to cover up the package.

Q. You suspicioned him all the time. didn't you?

A. Surely, after he had thrown the box in his trash there. I couldn't do otherwise.

Q. And you had all of these previous reports, didn't you?  
A. That is right.

Q. So that anything he would pick up and turn around and throw into the pile, the natural presumption was that he was stealing, isn't it? [130]

The Court: You are asking if that is the witness' natural presumption?

Mr. Townsend: Yes.

A. That is my presumption; yes.

Q. So you presumed that he intended to steal both of the trash baskets. He did the same thing to them that he did with the package, didn't he, and turned around and threw them into the pile?

A. That is right; he secreted it.

Q. Well, why did you presume he wanted to secrete the package and not the trash baskets?

A. He didn't throw any baskets in. He just threw the contents of the baskets in there.

(Testimony of Alfred E. French)

Q. Then, you never at all saw the package at point "B", did you? A. That is in—which one is that?

Q. The southwest corner area of the building, of the floor.

A. No; I didn't see that package after it was placed in there at all.

Q. You do not know what happened to it or how it was moved, do you? A. No.

Q. You saw a gentleman with his back to you, bent?

A. No; his back was not to me. I explained that his [131] back was—well, he was facing me.

Q. Facing you? A. That is right.

Q. And still his face to you, you saw no package at point "B", is that right?

A. At that distance I could not see what he was doing in there.

Q. Well, you had come to the point "I" for the same purpose, of looking to see what was going on, hadn't you?

A. To see as much as I could see.

Q. And your stoppage there, I think you testified, so he could not see you, was for the purpose of watching him? A. That is right.

Q. You were watching him with his face to you, is that correct? A. That is right.

Q. And you saw no package of Exhibit 3 and 4 in his hands?

The Court: Your answer?

A. I could not see what he had in his hands.

Q. By Mr. Townsend: The answer is yes or no, sir. Did you or did you not see the package.

The Court: He said he could not see.

Mr. Townsend: Thank you.

(Testimony of Alfred E. French)

Q. Now, when did you first call Mr.—I think you said [132] you picked up a telephone and called Mr. Franzen in from point “E”. Is there a telephone up there?

A. Yes. We have a portable telephone that can be plugged in any place in the gallery.

Q. Where was the defendant—you were following this course, now—where was this defendant when you first called Mr. Franzen on the telephone?

A. He was in the Station “E” area at a point just west of “H”, the letter “H”.

Q. He was not here?

A. No. Down—where was he or where was I?

Q. The question was: Where was the defendant when you called Mr. Franzen?

A. Yes. He was down there in Station “E”.

Q. Oh, down at Station “E”?

A. That is right.

Q. How high are these diagrams here? What allowance is indicated by the diagram from the floor?

A. They are about seven feet to the top.

Q. Seven feet to the top? A. Yes.

Q. What was the approximate height of the man you saw, this little fat man?

A. Well, he had been described as being short. He looked to me like— [133]

Q. You were looking at him, weren't you?

A. Well, I could not see down there in Station “E” area what was going on.

Q. You saw him all the way from point “E” down, didn't you?

A. Well, until he turned into the Station “E” area.

(Testimony of Alfred E. French)

Q. He was working, of course, with his back to you all the time, wasn't he, going south, and you were standing there? A. That is right.

Q. You saw him. What would you approximate the height of the man that you were looking at?

A. Well, that distance it would be pretty hard to approximate anyone's height. He looked to be an average height to me.

Q. You saw him up close, didn't you?

A. I did when he started, but I thought you were talking about when he got down there to point "H".

Q. How tall would you estimate he was at point "E"?

The Court: You mean when the witness was at point "E"?

Mr. Townsend: When the defendant was at point "E"—when the man, rather, was at point "E" that you saw sweeping with his back to you; how tall did that man seem to you to be?

A. Well, he looked pretty short. I would say around five-four.

Q. Five-four. Did he seem to grow any taller or shorter as he worked south? [134] A. No.

Q. So he appeared to be five-four all the way down the aisle, is that right?

A. Well, the farther away an image gets, as you well know. the more indistinct becomes the height and other parts that can be seen from a distance.

The Court: We will take the afternoon recess at this time of five minutes.

(Short recess.)

The Court: Is it stipulated, gentlemen, that the defendant is present?



(Testimony of Alfred E. French.)

Mr. Townsend: The defendant is present, your Honor.

Mr. Fitting: So stipulated.

The Court: Proceed.

Q. By Mr. Townsend: Mr. French, you have seen the various janitors sweeping daily from around the post office building, haven't you?

A. I have noticed them.

Q. You see them every day. I mean just in the ordinary course of things?

A. No; I don't see them every day.

Q. Well, you see them with some regularity, sweeping, the janitors at work? I am trying to get at—

A. No; I do not see them with any regularity. I see them occasionally. [135]

Q. You have seen them occasionally and you have seen them use these various brooms. You know the type of brooms they use; that is a push broom, isn't it? Isn't that what they use? A. Yes.

Q. In sweeping, you have perhaps seen when you get to anything that is bulky, it doesn't sweep smoothly with these type of brooms, does it? That is, the brooms of the type they make is for lighter types of trash, is that right?

A. Well, I don't know that we have any heavy type of trash on the post office floor.

Q. If it is anything like this bulky, say, a piece of paper rolled up the size of your fist, it would not pick it up; you would have to pick it up with your hands, wouldn't you?

A. That is right. May I add to that? You would not have to pick it up unless you intended to do something

(Testimony of Alfred E. French)

with it. You could push a piece of paper with one of those brooms easily enough. But I mean, if you are going to put it some place to preserve it, you would naturally pick it up.

Q. And if it is too heavy and too bulky to sweep, and you wanted to throw it out, the proper place to put it would be in a trash pile where the trash goes, wouldn't it?

A. If you were going to throw it out, you would; yes.

Q. How many feet—a few minutes ago there was a [136] pointer here. How many feet is it from point "E", approximately, down to the point "B"?

A. It would be approximately 55 or 60 feet.

Q. Or 60 feet? A. Yes, sir.

Q. How far is the ceiling from the floor on this floor?

A. The what?

Q. The floor to the ceiling; how high is it? How many feet?

A. Well, I really wouldn't have much of an idea how high it is.

Q. Just estimate. A. Approximately 22 feet.

Q. 22 feet. And how high is it from the bottom part of this lookout on the inside to the top part of it? How tall is it inside for a man standing up?

A. Well, a tall man could walk in there. I presume it would probably be about eight feet.

Q. About eight feet tall?

A. Maybe seven feet.

Q. And I think you said it is approximately 10 feet from the bottom up to that point from the floor?

A. I could have been a little off there. It might be a little higher, possibly 14 feet from the floor.

(Testimony of Alfred E. French)

Q. The bottom of it would be approximately 14 feet from [137] the floor? A. That is right.

Q. Now, I think you also testified that these racks that are indicated here at Pico Heights and Wilshire and the others down to point "B" are about seven feet tall from the floor, is that right? A. Yes, sir.

Q. Consequently, standing, as you were, at point "E", 14 feet from the floor and looking 60 feet south over a seven-foot wall, you could not see a five-foot four-inch man at all?

A. I did not look 60 feet. I beg your pardon. You asked me how far it was from "E" to point "B", which is different than from "H" to "E". Which do you mean, now?

Q. Point "B".

A. Yes; and I told you that was perhaps 55 to 60 feet.

Q. And the wall there is seven feet high from the floor? A. Surely.

Q. Is that correct? A. That is right.

Q. And you were 60 feet to the north?

A. No; I would not say I was 60 feet to the north.

Q. How far would you say you were?

A. About 50 feet. [138]

Q. 50 feet to the north and 14 feet high, is that right?

A. Yes.

Q. Now, you followed the defendant's course as he reached point "H" and then turned, sweeping into this area where "D" is? A. Yes, sir.

Q. Is that correct?

A. I followed him to where he turned; yes.

Q. You followed him to where he turned. Of course, he was approximately the same size in your observation

(Testimony of Alfred E. French)

up to this point "H" when he turned as he was at that point "E"?      A. I think I told you that.

Q. Approximately the same—

A. That the distance or the height of a man would be a little more difficult that far away to determine. All that I was able to note was that it was the same man. I followed the same man all along there and the man that was up there under point "E" was about, I judge, five feet-four.

Q. As a matter of fact, this man after reaching point "H" completely disappeared from your view, didn't he?

A. He did.

Q. And you saw him no more until you reached around point "I", is that right?

A. That is right—well, I did see him again in [139] between there. I saw him, as I explained a little while ago, when he came out to go down after his trash hamper.

Q. About how long was that from the time you observed him from point "E" in terms of minutes?

A. Between what two points exactly do you mean?

Q. Between point "E" and then, later, at point "I". I think it was carried to point "I" that you saw him going after his hamper, isn't that right?

A. No. I observed him going after his hamper while I was still up in the lookout.

Q. To point "E"?      A. That is right.

Q. I see. Did he have any of his work tools in his hands at that time, or did you observe?

A. I noticed he didn't have any work tools at the time he was going after his hamper.

Q. Just going empty handed?      A. Yes.

(Testimony of Alfred E. French)

Q. Nothing in his hands at all?

A. I didn't observe anything.

Q. You did not see the packages 3, 2, or 4 then?

A. No.

Q. Now, how long after you had seen him go after the hamper before you came out of the lookout, down and around to point "I"? [140]

A. Well, that probably would have been when he came back to Station "E" with his hamper. I would say probably it was about four or five minutes before I went down on the floor.

Q. Did you see him when he came back with the hamper?

A. Yes. That is what I mean, when I saw him going back with the hamper, about four or five minutes there.

Q. How long was he from the time he went after the hamper until the time he came back?

A. A very, very short time.

Q. He came immediately back with it?

A. He came immediately back with it; yes, sir.

Q. Did you notice where the trash pile was at that time?

A. He had swept the trash pile clear behind those cases there so that I could not see.

Q. That is the whole accumulated sweepings?

A. The whole thing.

Q. Had piled up down here at about point "B", about, is that right?

A. Some place in that area. I don't know whether it was point "B" or right in point "H" there. I could not observe it.

(Testimony of Alfred E. French)

Q. It was around the corner from point "H" to where you were, is that right? [141]

A. It was around the corner; yes.

Q. Then after he came back with the hamper, I think you said about five minutes later, you left point "E" and came downstairs, is that right? A. Yes.

Q. How did you come out of the lookout? What was your point of exit?

A. My point of exit, my route of exit was the same as my route of entrance, back to the inspectors' office.

Q. That is back to "L"? A. Yes.

Q. You completely circled all the way around to "L"?

A. That is right. And then I went around to the second floor, through the south corridor there on the second floor and then turned north and went up the employees' stairway opening up into the cafeteria.

Q. Where was that with regard to the indication on the map here? Was that east, west, east or what?

A. That would be—

Q. You went out here?

A. I came out past the front elevators there, came south here to the corridor, this being on the second floor.

Q. On the second floor.

A. Turned right, going north there and into the private stairs that comes up. [142]

Q. Up to the third floor?

A. Up to the third floor and around the tie section. You saw that there when you use to work there, I think, Mr. Townsend.



(Testimony of Alfred E. French)

Q. The stairway here is under point "G". That is the stairway down, approximately under point "G", is that right, or a little to the west of point "G"?

A. Where is the point "G"?

Q. Right here. I think you said the stairway was along about in here some where on the second floor; is that about right?

A. I think that is about where it would run on the second floor.

Q. And then ascend that stairway to the third floor?

A. Yes, sir.

Q. Where did this stairway lead into the third floor? Does it come up at point "G"?

A. Well, it comes up near the tie section there.

Q. Near the which section? I am sorry.

A. I guess that would be up—that would be farther up there. I had forgotten that that is only a portion of the floor there. They would have come up probably off of this diagram here north of all of this area. Here is where I made my entrance onto the third floor. just north.

Q. Where did you reach the bottom of the stairway, is [143] the first thing I am trying to get; and where did you reach the top? Where were you when you were at the bottom of the stairway?

A. I am sorry, I told you I was thinking that sketch was of the whole floor there.

Q. The second floors are practically the same in general pattern as the third, aren't they?

A. I don't know too much about that building, to tell you the truth. I haven't done an awful lot of work in that building.

(Testimony of Alfred E. French)

Q. You have an office there?

A. I have an office there.

Q. And you are there every day?

A. Yes; but I don't go down on the working floor very much.

Q. How long have you been there in the building?

A. Probably about six months.

Q. Six months?

A. Yes. But, as a matter of fact, they—

Q. You have been out on this floor?

A. You asked a question where those stairs would come up. I think they would be just a little ways north of that upper limit of the diagram there.

Q. We are just trying to find out where you came out. You have already testified you entered the stairway at a [144] point—

A. You know that building better than I do.

Q. That is right. A. You used to work there.

Q. Surely.

A. If I tell you the stairway back there that the employees used and the cafeteria are the stairs that I used to come up you will know.

Q. Assume that this point "G" is a point on the second floor; where would the stairway be?

A. It would be a considerable distance beyond the upper limit of the diagram.

Q. Will you indicate, then, your course from the time you exited from the lookout at "L" and how you got to the stairway, if it is different from what you previously testified? Just give us now the present course.

A. I followed the same course from here down. This curved on the second floor, where I turned right and came

(Testimony of Alfred E. French)

to the point where those stairs go up from the second and third floor, which, on second thought, I remember are outside the limits of that diagram.

Q. That is the stairway? A. That is right.

Q. And where would you estimate the point of beginning of that stairway on the second floor north of the diagram? [145] Would it be under the lavatory?

A. I really don't know. I have never gone through that building with a fine-tooth comb.

Q. Would it be under the janitors' closet?

A. I can't tell you that.

Q. As a matter of fact, you don't know where you went upstairs, do you?

A. The stairs, I tell you, were north of the diagram, and the janitors' closet—well, the janitors' closet would be called the upper edge of the diagram outside of the stairs and some distance.

Q. As a matter of fact you have no clear recollection which way you went?

A. I beg pardon. You know where the stairways are.

Q. The judge doesn't know.

A. I told you I came up the stairway there. You know where they are.

Q. I know, but the judge does not. He wants to know.

A. I think he understands as well as you do.

The Court. Proceed, gentlemen. Put your next question.

Q. By Mr. Townsend: When you came out at the top of the stairway on floor three, when you knew and

(Testimony of Alfred E. French)

recognized you were on floor three—you have gone up the stairs now—where were you on floor three?

A. I was near the elevator shaft where the stairway [146] comes up there above the cafeteria, toward the mid portion of the building looking at it from south to north.

Q. Does the stairway come directly up or does it cross the building as it ascends?

A. It comes directly up.

Q. Directly up?            A. Yes.

Q. So you were at a point, approximately, on the third floor when you got to the top, very close to the same general point when you were on the second floor, is that right?            A. Yes, sir.

Q. So you would be approximately in the upper north-east corner on the second floor?

A. I wouldn't say that. It is a long ways from the stairs down to the northwest corner of the building. That is on the west side of the building.

Q. Do you have lookouts on the second floor?

A. Yes; there is a lookout there.

Q. Are they of the same pattern? I mean in the—

A. I can't tell you, because I haven't been all the way through it.

Q. All right. But, from that point—you are on the third floor now—how did you get from that point after you got upstairs around to point "I"? You are now at the top of the stairway. Will you follow your course from the top of [147] the stairway to point "I"?

A. I turned, or, rather, I went almost directly east across the building and I reached the point that I have laid out with a dotted line there. I think I did that some-

(Testimony of Alfred E. French)

time ago, didn't I, and showed you my route over the parts shown in the diagram.

Q. I mean off the diagram from the stairway to the point on the diagram. I am trying to get your course. Did you go directly from the stairway point on the diagram?

A. I went across the building approximately from west to east, and then turned right and traveled south onto the diagram.

Q. Now, with all of this round about way—I mean about how long do you think it took you to do all that?

A. Oh, probably three minutes.

Q. You say you are not too familiar with the route as you were going, were you?

A. Oh, I am very familiar with the route.

Q. You were not feeling your way as you went long?

A. No.

Q. Did not get lost at any time? A. No.

Q. At any time losing your location?

A. I know the third floor there fairly well. I am not too conversant with the second floor. [148]

Q. How much time would you estimate, the number of minutes, from the time you left point "E" until you finally landed up at point "I"?

A. Probably around three minutes. I was in quite a hurry to get down there.

Q. Three minutes. Now, I think you testified when you got to point "I" you saw the defendant bending over his hamper, is that right? A. That is right.

Q. I think you testified that he bent over there for approximately one and a half minutes; is that your testimony? A. That I was there?

(Testimony of Alfred E. French)

Q. That the defendant bent over his hamper for approximately one minute?

A. I think I testified that I watched him for about half a minute. but he was still bending over at the time I left.

Q. How long from the time you then turned until you got back there with Mr. French and Mr. Kinny, I believe you testified?

A. It probably would have been about five minutes, five or six minutes.

Q. Now, what was the hour when you left point "E" on the lookout?      A. Approximately 5:45. [149]

Q. And what was the hour when you reached point "I"?

A. Well, I did not carry a stop watch with me. I would only estimate it took me about three minutes there, in which case I should have arrived there about 5:48.

Q. Did you have a watch on your person at the time, a wrist watch?

A. I did—not a wrist watch; no.

Q. Did you make an observation of the time?

A. No; I didn't at that time.

Q. How long was it before you came back with Mr. French and Mr. Kinny?

A. Mr. French and Mr. Kinny?

Q. Mr. Franzen—pardon me—and Mr. Kinny after you had seen him bending over the hamper, now, and when you came back with Mr. Kinny and Mr. Franzen, is that right?

A. Yes. It would have been approximately five minutes.



(Testimony of Alfred E. French)

Q. At the time you saw the defendant bending over the hamper did you observe a pile of trash?

A. No.

Q. That is, there was no trash at that time on the floor? A. That is right; there was not.

Q. That is, it had all be picked up and thrown into the hamper?

A. I didn't observe any. There might have been a little [150] behind a pillar or something.

Q. You had observed previously a pile that he had accumulated?

A. I tried to explain several times that I could not see what went on from point "E" after he went up and turned the corner.

Q. As the sweeping went on down from point "E" all the way to "H" you saw the pile that did accumulate?

A. That is right; yes, sir.

Q. And when you got around to "I" you saw no pile on the floor, is that right? A. That is right.

Q. But the hamper was there with some of the contents in it, is that right?

A. Well, I couldn't see from point "I" what was in the hamper.

Q. Was anything at all in there?

A. I couldn't see from point "I".

Q. Is that the same hamper that you brought back a few minutes later and dumped? A. Yes.

Q. The same hamper that you saw him bending over into was the same one that you later dumped, is that right?

A. I am reasonably sure that it was; yes.

(Testimony of Alfred E. French)

Q. Can you tell the difference, Mr. French, in the [151] sound of a hamper when it is emptied or when it is full rolling across the floor?

A. No; I have never thought of that point.

Q. You saw him when he went and got it and brought it to this point, I think you testified, didn't you?

A. Yes.

Q. In listening to it, you could not form any opinion or you did not form any opinion at that time as to whether it was empty or whether it had contents in it?

A. Well, yes; my opinion was that it was empty.

Q. It was empty. And at the time when you returned, you found it in fact full, is that right?

A. Well. about two-thirds full.

Q. About two-thirds full. The two packages that you found in the basket were, I think you testified, down near the bottom just mixed up in the trash near the bottom of the hamper, is that right?

A. Well, they were pretty far down. I would say they were approximately in the middle of the pile, although we did not take a ruler out and measure it.

Q. But you did not locate it until you actually turned it up and dumped the whole thing out, before you finally got the packages?

A. That is right. And then we had to pull a lot of trash away and dig down into it to find them. [152]

Q. And after having found the packages in this sack of trash, you then inquired of the defendant as to the identity of them and so forth, is that correct?

A. What do you mean by "identity"?

Q. I have to quote your words. You then immediately said to the defendant: "What did you do with that

(Testimony of Alfred E. French)

package?" or something in substance to that effect. Were those your words?      A. Yes.

Q. And I think you said further, in fact, to use your own expression, "you insisted that he did know something about it," is that right?      A. Yes.

Q. And he equally as energetically denied any knowledge of it apart from any other trash?

A. That is right.

Q. Is that correct?      A. That is correct.

Q. Where do the janitors take the hampers when they get them filled up?      A. I really don't know.

Q. Where do the janitors take the hampers when they get the mfilled up?      A. I really don't know.

Q. What do you do with your trash? [153]

A. Well, I don't do anything with the trash.

Mr. Fitting: If the court please, he said he does not know.

Q. By Mr. Townsend: You don't know what they do with the trash?      A. Not in detail; no.

Q. You are a postal inspector, aren't you?

A. I know that the trash eventually arrives in the basement, but just what route it takes to get there I would not be able to tell you.

Q. What are your functions as postal inspector? What do you inspect?

A. Well, we do not inspect trash as a general rule. We inspect offices and the accounts.

Q. You inspect where the custodial labor would carry their trash, don't you?      A. No.

(Testimony of Alfred E. French)

Q. You don't?

A. Well, we know the general disposition of the trash, but we do not look into the minutest detail of exactly how it is handled.

Q. You are a postal inspector and do not even know where the trash is supposed to go.

The Court: Is that a question?

Mr. Townsend: That is a question. [154]

A. I know that trash goes to the basement.

Q. All right. A. And it is sorted through.

Q. Do you know what is supposed to be done with it after they get it into the basement?

A. It is supposed to be sorted through.

Q. And who does the sorting through?

A. The custodial employee who is assigned to the duty.

Q. And is that a regular floor assignment?

A. I would not be able to tell you that. That is not a part of our function.

Q. If one would miss-sort it or something, that would be your function, wouldn't it?

A. Not unless it was brought to our attention.

Q. Have you ever been down in the incinerator room in that building?

A. The other day I was down in the room where they sort through the trash. But—

Q. Was that your first experience?

A. It was.—I don't know where they took it from.

Q. Never down there before? A. No.

Q. What did you find when you got down there?

A. I found—

The Court: Do you mean the other day? [155]

(Testimony of Alfred E. French)

Mr. Townsend: Yes. When you got down to this sorting room.

A. I found several hampers setting around there that had trash in them, evidently, and found a screen there where they run the hamper up on an elevated platform and dump it and sort the trash through this screen and pull out any mail that might have inadvertently gotten in.

Q. Did you see any hampers being emptied there at the time you were there? A. No; I didn't.

Q. The hampers that you did see, were they empty?

A. No; they were not all empty. There were some with contents in them.

Q. Was the contents trash? A. Yes.

Q. Was there in this sorting room an accumulated pile of trash there?

A. I don't remember of seeing any accumulation of trash right there at the time. As a matter of fact, I don't know how that trash is disposed of here, whether it is carried away or whether it is incinerated right there.

Q. Did you observe a gentleman there doing the sorting? A. Yes.

Q. What was he sorting?

A. Well, I would like to correct that. He was not [156] actually working at the time I was there. I was down there to question him on a matter and, as a matter of fact, he was not doing any sorting right at that time.

Q. But you observed the equipment with which he does sort when he is sorting, is that right?

A. Well, I couldn't say that I observed all of it. I observed a part of it, that which I have described to you.

(Testimony of Alfred E. French)

Q. Have you ever as a postal inspector been informed as to the purpose of all this that you saw down there?

A. Well, the purpose of it is to get rid of the trash. Of course, before it is disposed of, to look through it and extract any pieces of mail that might have been inadvertently mixed up in it.

Q. Isn't it a fact, Mr. French, that the specific purpose of this assignment is to screen mail that might be lost in the trash?

A. That is correct.

Q. That is quite regularly done, isn't it?

A. Yes.

Q. And particularly so in the Christmas season or any other rush season, isn't it?

A. Well, I would not say particularly so. It is always done.

Q. Isn't it heavier in the Christmas season than any other time of the year? [157]

A. It is heavier; yes.

Q. You would have some several million pieces of mail.

A. They are no more particular with it at Christmas than they are any other time. They are always supposed to be careful with that sort of matter.

Q. Do you not have to have added personnel to sort and handle mail during the Christmas season?

A. Yes. But I don't know that they have any extra help for that:

Q. Didn't they have during the past Christmas season some five or six thousand extra employees just for the Christmas season?

A. I don't know how many they have. They have a large increase.



(Testimony of Alfred E. French)

Q. A large increase, representative increase?

A. Well, they have an increase every Christmas.

Q. And they put them off after the Christmas season, don't they?      A. They do what?

Q. They release them, they discharge them after Christmas day?

A. Not all of them. There are some of them discharged.

Q. When did this increase begin?

A. Well, it probably began early in the month. That is up to the postmaster. [158]

Q. It starts around 10 days before Christmas, doesn't it?      A. That is when the peak begins.

Q. Around the 15th of December?

A. They put on extra people a number of days before that.

Q. So the fact of the case is that the mail load tremendously increases during those 10 days, is that right?

A. That is well known; yes.

Q. I beg pardon?

A. I say that is a well known fact; yes.

Q. And the probability of mail getting either inadvertently mishandled or lost becomes greater at that particular season, doesn't it?

A. In the aggregate; yes.

Q. And at that particular time of year a man is down there sorting this trash full-time, isn't he?

A. I don't know what his hours are. I am sorry.

(Testimony of Alfred E. French)

Q. What time of the day or night was it when you were down there?

A. I was down there around 1:00 o'clock, as I remember it. No; it was a little later than that. It was about 3:00 o'clock one afternoon.

Q. In the morning or afternoon?

A. In the afternoon. [159]

Q. 3:00 o'clock in the afternoon. Did you observe how many were working in that particular location?

A. There was only one man there at the time. As a matter of fact, he was not working.

Q. How close is this— A. What is that?

Q. What is the proximity of this sorting room to the incinerator where the trash is burned?

A. I couldn't tell you. I did not go down there to inspect the incinerator and don't know whether there is an incinerator there or not.

Q. If, perchance, one of the custodial laborers would wrongly burn a piece of mail would that come within your jurisdiction, in the incinerator?

A. Well, if they did it accidentally, it very likely would not be brought to our attention. In other words, the postmaster has certain things to do, and he does not or is not employed to run up to us with every little thing that happens in the office that is a matter of routine.

Q. And if they burn it accidentally or on purpose, it comes to your attention, doesn't it?

A. Not every little thing; no.

Q. Isn't that your specific function?

A. That is a function, if there is any value lost and it can be shown that it probably occurred down there. [160]  
In other words, if we have some mail that comes to our

(Testimony of Alfred E. French)

attention that does not reach the addressee, we generally don't run down to the incinerator to ask the man down there whether he might have burned it in the incinerator.

Q. Suppose that you have some suspicion that a man was burning some of it, would you then have your jurisdiction to go down there? A. Yes.

Mr. Fitting: If the court please, I object to that question. It calls for a conclusion of the witness and it is on a subject that is completely immaterial and irrelevant.

The Court: He has already answered it. Objection overruled. The answer may stand.

Q. By Mr. Townsend: I think your answer was yes; that would come within your jurisdiction, is that right?

The Witness: Will you repeat your question?

The Court: The answer is in the record.

Mr. Townsend: The answer is in the record. All right.

Q. Where is your office located in this building as an inspector?

A. On the second floor, room 202, right in front of the elevators on the south side of the building facing the Union Station.

Q. And is it located as to have direct access to the working floors, that is, to the— [161]

A. No; it is not contiguous with the working floors. We have to walk a little distance to get on the working floors.

The Court: Are you about finished, Mr. Townsend?

Mr. Townsend: Yes. Just one more question, your Honor, and I am about through with this witness, I think.

(Testimony of Alfred E. French)

Q. At no time did you see either of these packages, either 2, 3, or 4 in the defendant's personal possession?

A. Yes; I saw it in his possession when he picked that package off the sack rack.

Q. When he picked it up, I thought you said he turned his body with his back to you, is that right?

A. No. No; quite the contrary. His back was turned to me when he picked it up.

Q. And he turned his face to you?

A. And he swiveled around, facing me, and then went on around to a point where I was facing the trash pile.

Q. He at that time was at point "A", is that right?

A. Will you point out point "A"?

Q. Pico Station? A. That is right.

Q. When he was at point "A" where was the trash pile?

A. The trash pile was just to the right. Don't we have a letter there, an "F"?

Q. Does "F" represent the trash pile?

A. Yes. [162]

Q. Approximately what is the distance in feet between "A" and "F"? A. As a matter of fact, that—

The Court: What is the approximate distance between "A" and "F", Mr. French? I think we have had that twice, but let us have it again.

The Witness: Pardon me, your Honor. I just want to explain that "A" is in a little too far. But the distance, to answer your question, would have been probably about three feet.

Q. By Mr. Townsend: And he picked that up from the sack rack floor there and threw it some three or four feet directly into the trash pile? A. Yes.

(Testimony of Alfred E. French)

Q. And after that, I think you testified he took his broom and proceeded to sweep the entire area, is that right; is that your testimony?

A. Well, after he had dumped a couple of pails or buckets of wastepaper in it and then got some sweeping compound, why, then he proceeded to sweep.

Q. That was the sequence that immediately followed the throwing of this package into the trash?

A. That is right. Well, immediately following, he pushed some racks up together. He first pushed the racks up compactly after throwing the package, and then dumped the [163] wastebaskets and the sweeping compound.

Q. Was that the proper function of what he did or was supposed to do? That was proper?

A. Those were his duties, except for the picking up of the package.

Mr. Townsend: That is all.

Mr. Fitting: I would just like to ask two or three questions.

The Court: Please limit it to that, will you?

Mr. Fitting: All right, your Honor.

#### Redirect Examination

By Mr. Fitting:

Q. Mr. French, in your direct examination you referred to an individual as Mr. Kelley and described what Mr. Kelley did. When you referred to Mr. Kelley did you mean that individual sitting over there?

A. Yes, sir.

Q. You also said that these slits in that observation gallery were about a half inch wide? A. Yes.

Q. Did they in any way hamper your vision? Could you see perfectly through them?

A. I could see perfectly; yes.

(Testimony of Alfred E. French)

Q. You also testified that you saw Mr. Kelley bending [164] over his trash hamper in the general area of "B"?

A. Yes, sir.

Q. Could you see his hands when he was bending over the trash hamper?

A. I saw the tops of his hands, and he was moving them around somewhat, but I couldn't see just what he was doing.

Mr. Fitting: That is all.

Recross Examination

By Mr. Townsend:

Q. When he moved his hands around did he appear to be packing trash into that hamper? A. No.

Q. Where you were standing up at point "E" what was the condition of light in that whole area?

A. As I remember it, he had the lights out at that particular time in that particular section.

Q. The lights were out. Was that when you were at point "E"?

A. No. That was when I was at point "I".

Q. What were the conditions of the lights when you were at point "E"? A. The lights were on.

Mr. Fitting: If the court please, I believe Mr. Townsend has been over that. [165]

The Court: He has answered. Are you going to be much longer, gentlemen? I want to arrange for a night session if you are going to be much longer.

Mr. Townsend: I have finished, your Honor, with him.

Mr. Fitting: No further.

The Court: You may step down, Mr. French.

Mr. Fitting: Mr. Kinny.



## ROY KINNY,

called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, sir?

The Witness: Roy Kinny.

Mr. Townsend: I think perhaps, if the court please, we can save some time if we can ask on voir dire what the people purport to prove by this witness, by all the witnesses not at the scene of any of the transactions.

The Court: If you tell us that there might be a possibility of a stipulation.

Mr. Townsend: I do not know what he is supposed to prove by him.

Mr. Fitting: Mr. Kinny is simply going to prove what the scope of Mr. Kelley's duties were.

The Court: Offer a stipulation and perhaps Mr. Townsend will join in that stipulation. [166]

Mr. Fitting: Mr. Kinny will testify that all the custodial laborers, including Mr. Kelley, were instructed that they were not to touch mail at any of the places where mail was customarily put or kept. He will also testify that if they found any mail or packages on the floor, or any places where mail did not belong, they were to pick it up and put it on any of the tables or racks that were around there; and that if they found any money, they were to put it in a specific place that was maintained in which money should be put.

The Court: Does that cover your offer?

Mr. Fitting: And he will testify that Mr. Kelley was so informed at the time he was employed there.

The Court: So instructed?

Mr. Fitting: So instructed.

The Court: Do you accept the stipulation?

(Testimony of Roy Kinny)

Mr. Townsend: With this particular addition, which we will bring out on cross examination, that his particular duties were to sweep all areas, including the cleaning of the sack racks; that the instructions with regard to the handling of mail was contingent upon his knowledge that it was mail. With that addition, we will be happy to stipulate.

Mr. Fitting: That is agreeable, your Honor.

The Court: Very well. As I understand, you both stipulate to the effect that this witness will be deemed to have been sworn and to have testified as upon direct examination [167] as Mr. Fitting has stated and upon cross examination as Mr. Townsend has stated?

Mr. Townsend: So stipulated, your Honor.

Mr. Fitting: Now, Mr. Kinny—

The Court: Do you so stipulate, Mr. Fitting?

Mr. Fitting: Yes, your Honor.

The Court: Very well.

Mr. Fitting: Mr. Kinny will also testify that Mr. Kelley is the only gentleman on the custodial force as small as he is. None of the other members of the force were on duty that day of his size.

Mr. Townsend: Just a moment. That is part of the testimony that I think would be objectionable, because it would certainly be a conclusion of the witness to which he could not testify.

The Court: Had you finished your offer?

Mr. Fitting: Mr. Kinny will testify that he was the supervisor of the custodial laborers and on that morning he assigned the custodial laborers to their various duties on the third floor; and he assigned Mr. Kelley to sweep the particular area concerning which all this discussion

(Testimony of Roy Kinny)

has been had; and that Mr. Kelley was the only small member of the custodial force he assigned to work in that area that day.

The Court: Do you stipulate that this witness will be deemed to have testified as to the assignment as stated by Mr. Fitting? [168]

Mr. Townsend: As to the assignment.

The Court: But not as to the height of the defendant?

Mr. Townsend: As to the height, we certainly object to that as a conclusion.

The Court: Otherwise?

Mr. Townsend: Otherwise the stipulation is that he would so testify.

The Court: Very well. Ask him the questions that you wish about the height of the defendant.

### Direct Examination

By Mr. Fitting:

Q. Mr. Kinny, are you acquainted with the defendant, Mr. Kelley? A. I am.

Q. Did you assign him to work on the morning of December 21st?

Mr. Townsend: That has been stipulated to.

The Court: That is covered by the stipulation. Objection sustained.

Q. By Mr. Fitting: What height would you judge the defendant to be?

A. Oh, five-three to five-two, along there.

Q. Were there any other custodial laborers that small?

A. None of that physical build. [169]

Mr. Townsend: Just a moment. I object to that as being a conclusion of the witness.

(Testimony of Roy Kinny)

The Court: Sustained.

Q. By Mr. Fitting: Mr. Kinny, what would you estimate to be the height of the next smallest custodial laborer that was at work on that morning?

Mr. Townsend: I object to that question on the same ground.

The Court: Sustained.

Mr. Fitting: Well, your Honor—

The Court: Sustained.

Q. By Mr. Fitting: Were there any other custodial laborers of Mr. Kelley's height?

Mr. Townsend: The same objection, if the court please, the same grounds. It is the same question with different phraseology.

The Court: Sustained. No foundation laid, no showing that this witness examined all these workmen.

Q. By Mr. Fitting: Mr. Kinny, did you see all the custodial laborers that you assigned to work on the third floor on the morning of December 21st? A. Yes.

Q. Did you look at them all? A. Yes.

Q. Are you familiar with their heights? [170]

A. Yes.

Q. Were any of them as small as Mr. Kelley?

A. No.

Mr. Townsend: I object to that, if the court please. It is still calling for a conclusion of the witness. He has not shown he has made any measurements of anybody's height.

The Court: Overruled. The answer may stand.

Mr. Fitting: That is all, your Honor.

Mr. Townsend: That is all.

The Court: You may step down Mr. Kinny.

Mr. Fitting: If the court please, the Government would now like to offer into evidence Exhibits 1, 2, 3 and 4.

The Court: Exhibits 1, 2, 3 and 4 for identification are received into evidence.

Mr. Fitting: That is the Government's case, your Honor.

The Court: Are you offering Exhibits 5 and 6?

Mr. Fitting: No, your Honor.

The Court: The photographs?

Mr. Fitting: No, your Honor.

The Court: Very well. Does the Government rest?

Mr. Fitting: Yes; it does.

The Court: The defendant.

Mr. Townsend: If the court please, we should like to be heard at this time on a motion to dismiss the indictment, if we may. [171]

The Court: A motion for a judgment of acquittal?

Mr. Townsend: A motion for a judgment of acquittal; that is correct.

The Court: On what ground?

Mr. Townsend: Two grounds. One is that the defendant is charged under the indictment to have violated U. S. Code Title 18, Section 318, which reads as follows:

"The postmaster or employee detaining, destroying or embezzling mail matter."

That is the subject of the section.

"Whoever, being a postmaster or other person employed in any department of the Postal Service, shall unlawfully detain, delay, or open any letter, postal card, package, bag or mail intrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, \* \* \*"

I think, substantively, all the evidence which has been categorically admitted for the Government is to the effect that there was no intention at any time whatsoever that Exhibits 2, 3, and 4 were ever destined with any intention for official mailing. They were drawn and prepared for a specific purpose and place, not in the care of the mails, but placed at a given place where the custodial workers were known to come along, placed there at the time before he came along, approximately a very few minutes before he approached, [172] as certainly having knowledge that he was coming or would have knowledge in the ordinary course that he would come, and placed in a place where they know he was going to sweep among that trash in the course of his assignment, eventually accumulating the various things that had been swept up in the cleaning. After they had laid there for a specific number of minutes Mr. Franzen was sent back by instructions to see if it was still there, and to follow out his various instructions.

There is no evidence at all anywhere that certain procedures you use in the course of the mail, which I am certain is utterly in the acquaintance of this gentleman who is a postal inspector, and he knows, I think, or should know that the formalities of the postal service is not to put any package into the hands of another, some foreman or superintendent or custodian of the building, and tell him to place that down on the floor somewhere, some 15 inches from the floor, and watch it for a certain number of minutes.

The Court: Must I not take Mr. Kinny's testimony by the stipulation that this defendant was instructed not to pick up mail matter off the floor?

Mr. Townsend: That is correct, your Honor; mail matter which he knew to be mail matter is the stipulation.



There is not one scintilla of evidence anywhere constituting the essence of any crime. You certainly must have the act and the state of mind of that defendant. There has been not one scintilla [173] of evidence under this section.

Where is there any intention on the part of the defendant, having any knowledge of the identity of what it was?

The lights were low. It was 4:00 or 5:00 o'clock in the morning. The conditions of lighting were dim, according to all the witnesses. And then, coming along this course of sweeping, with the type of broom he had, any bulky substance, as the gentleman testified, the broom would not pick it up and naturally, the defendant would pick it up and throw it into the trash pile.

The Court: But, on this motion, I must accept the testimony as given. Take Exhibit 2, it is obviously a Christmas package.

Mr. Townsend: But it is now shown, if the court please, that the defendant ever saw the address on it, whether it was setting upside down or what.

The Court: Upon this motion, not having heard the defendant's case, I must take Mr. French's testimony with respect to that.

Mr. Townsend: Mr. French did not testify that the defendant had knowledge of the identity of the package as to what it was. He testified as to Mr. Franzen's knowledge. He at no time testified as to the defendant's knowledge. How could he have testified to it?

The Court: But under Mr. Kinny's instructions, he [174] violated the instructions in picking up this article off of the truck or wherever it was—it was not on the floor—and throwing it into the trash pile. He could not pick it up very well without seeing these postage stamps on it.

Mr. Townsend: If he picked it up and immediately turned around and threw it into the trash, without giving it any examination observation—the testimony was that it was immediate—he picked it up, turned around and threw it. It was a continuous motion. He took no time to look and see, nor was he charged with any duty to look and see. It was not incumbent upon him, according to instructions, to go and search and find out which is mail and which is not. That is what a man is put down in the incinerator room to do, to sort and determine which is mail and which is not.

The Court: Under his instructions, according to Mr. Kinny's testimony, he should have left that parcel, Exhibit 2, where it was, should he not?

Mr. Townsend: I think the stipulation carries the conclusion he was also instructed to clean all the area, including the sack rack, floors, everything else. That also was part of the stipulation. It certainly was part of his duty to pick up any trash that was there, without taking any particular cognizance of it. No trash was there, according to the testimony. It was an empty set of racks. No reason to presume that mail was there. It was early in the morning [175] and the place was dark. And if there is any presumption in which the court is to indulge it must be a presumption, this being a criminal proceeding, that he did not know. I do not think the court would indulge any presumption that he did know, and there is no evidence at all that he did.

The Court: Have you finished your motion?

Mr. Townsend: I have finished my motion, your Honor.

The Court: The motion is denied.

Mr. Townsend: Take the stand, Mr. Kelley.

## DEFENSE

WILLIAM GATHER KELLEY,

the defendant herein, called as a witness in his own behalf, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: William G. Kelley.

## Direct Examination

By Mr. Townsend:

Q. Where do you live, Mr. Kelley?

A. 1353 West 36th Place.

Q. How long have you lived there?

A. 25 years.

Q. Who do you live there with? [176]

A. My wife.

Q. Do you own the property where you live?

A. I do.

Q. Prior to the date of your arrest where were you employed? A. United States Post Office.

Q. How long had you been in their employ?

A. Approximately seven years.

Q. Prior to the time of your arrest had you ever had any trouble or difficulty in connection with your employment? A. No.

Q. Speak louder so we can hear you and the court can hear you.

Have you prior to this time had any trouble in connection with your employment? A. No.

Q. I still can't hear you, myself.

A. I said, "no."

Q. All right. Calling your attention to the 21st day of December, Mr. Kelley, you worked on that night, did you? A. I worked on that morning.

(Testimony of William Gather Kelley)

Q. What is your work schedule?

A. Janitor work.

Q. What hours? A. 5:00 o'clock. [177]

Q. Punch in at 5:00 o'clock? A. That is right.

Q. What time did you punch out?

A. Punched out at 5:30.

Q. Who is your foreman? A. Mr. Kinny.

Q. Where do you receive your assignments?

A. Down in the basement.

Q. Did you meet and receive your assignment that morning? A. Yes, sir.

Q. Is there any incinerator room down in that basement where you met? A. There are.

Q. Anywhere close to where you met to get your assignment? A. No.

Q. Just a sorting room down there? A. Yes.

Q. Where you put trash before you burn it?

A. Yes.

Q. Do you know whether or not a man is kept there by full time assignment in that assorting room?

A. They are.

Q. Is that one of the custodial workers? [178]

A. He is not classed as a custodian. He is classed as a postal mail handler.

Q. A postal mail handler? A. That is right.

Q. Is there one there continuously during the routine working hours? A. Every day.

Q. Do you know the purpose of his being there? What is the general function, I mean?

A. Looking for mail that is lost in the tubs.

(Testimony of William Gather Kelley)

Q. Where were you assigned to work on the morning of December 21st?

A. On the third floor on the west end of the building.

Q. What did your assignment take in, in terms of area?

A. It takes in three aisles, approximately about 60 feet and 150 feet deep—I mean 250 feet. The building is 250 feet wide and I have three sections there, which is about 20 feet to the section or 22, something like that.

Q. Had you worked that same section before?

A. Many times.

Q. I mean are you assigned to the same section each day or different assignments each day?

A. No. That was my first assignment when I went into the building to work. I worked for about three years or more, then they changed me, and I hadn't been on that assignment for over a year and a half or more, because I had been out on [179] the R. C.

Q. How long has Mr. Kinny been your foreman?

A. Ever since I have been there.

Q. The entire time. Do you know what time that you got up to the area of your assignment that morning, approximately?

A. We punched in at three minutes to 5:00, and I was on the third floor approximately five or six minutes past 5:00.

Q. Where did you keep your tools to work with?

A. I keep my tools down in the basement. I went by my tub where I keep my tools and carried my tools up with me.

(Testimony of William Gather Kelley)

Q. You say your "tub." You mean your trash tub or a laundry tub?

A. No. I have a box down there with rollers on it and I keep my tools in it.

Q. Anyone else have their tools in with your tools?

A. Not supposed to.

Q. You are assigned the tools as well as duties, is that right?

A. That is right.

Q. Are you assigned a certain hamper?

A. No. You pick up any hamper as long as it is an old one. They don't allow us to put rubbish or trash in one of the new tubs. [180]

Q. Where do you put your trash?

A. Elevators 9 and 10 and carry it down.

Q. Before you carry it down there what do you put in the hamper?

A. Put the trash in the hamper; yes.

Q. What are your instructions with regard to disposing of the hamper after you fill it up?

A. To take it down.

Q. Where do you take it to?

A. Down to the basement.

Q. Where in the basement?

A. Down into the southeast corner.

Q. What room is this where you take it?

A. In the basement.

Q. I mean do you take it directly to the incinerator, or do you take it first to the sorting room?

A. No; you don't carry it to the incinerator at all. You carry it to the assorting room.

Q. Is that your specific instruction?

A. That is right.



(Testimony of William Gather Kelley)

Q. Always take it to the sorting room, never to the incinerator, is that right?      A. That is right.

Q. Has that been your continuous instruction all the time you have been there? [181]

A. All the time I have been there.

Q. Calling your attention to the course of your work, where did you start sweeping that morning?

A. I started sweeping in the northwest corner of the building.

Q. Which direction did you sweep?

A. Swept south.

Q. In sweeping the trash do you sweep all around the aisle, or do you sweep out immediately under those racks?

A. The way the building is laid out, we start in the northwest corner and sweep it out to the center aisle. Then we go into the middle section and sweep it out to the center aisle. And then we come back and sweep it right on down to where we pick up our trash.

Q. Did you sweep under the racks?

A. Swept all over.

The Court: Did you sweep under the racks?

The Witness: Yes, sir.

Q. By Mr. Townsend: Do the racks stand flat on the floor or do they have legs of any sort?

A. The racks stand on little dollies, some of them, about four or five inches high from the floor.

Q. That is the sack racks. Some of the sack racks have wooden floors on them down on rollers, is that right?

A. The rack itself sets on the rollers. [182]

Q. Do they have a different person there to clean the floors and to clean the racks?      A. No.

(Testimony of William Gather Kelley)

Q. The same custodial laborer cleans everything in that area, is that right?      A. That is right.

Q. Do you use a hand broom?

A. You could use a push broom. I have a straight broom; yes.

Q. A little short handle, something about that long, about a foot long?

A. Oh, it is longer than that. I have a straight broom but I couldn't use it on pushing trash.

Q. Do you generally have one?

A. I generally keep one all the time.

Q. What do you do with that broom?

A. That is to get in cracks where I can't get in with my push broom, just wherever that comes convenient for me to work with.

Q. That is, you do not sweep the floor with it?

A. No.

Q. You sweep the floor with a push broom, is that right?      A. That is right.

Q. In the little places, corners and cracks, you use a hand broom?

A. Use the hand broom where I can't get my push brush. [183]

Q. Is that correct?      A. That is right.

Q. Would that type of broom that you sweep the floor with push anything that is bulky, that is, of any size? I mean, sweeping the floor on something that is of any size, will the broom pick that up?

A. It won't pick it up, but you can shove it along on the floor.

(Testimony of William Gather Kelley)

Q. How did you generally do it if you got some bulky trash?

A. We just reached down with our hands and pick it up.

Q. In sweeping how did you accumulate your trash? Did you do it in individual piles, or did you go all the way accumulating a big pile?

A. Depends on how heavy the trash is on the floor.

Q. How did you do yourself?

A. Well, that particular morning I swept mine all the way across the building.

Q. Did you at any time pay any notice or take any notice to any mail of any kind that you observed to be mail?

A. No; because I didn't see any packages on the truck, because when I was sweeping we shove the trucks around to make room to get around so we can clean. A package could have been laying on the truck and had been shaken off by pushing the trucks around. [184]

Q. What are the conditions of light under which you work over in that area?

A. The light sets from about eight to six feet apart in that particular area. There is about three run abreast. There is about 12, about 12 or 14 lights to the section.

Q. Those lights are controlled by switches at the station at various intervals, are they not?

A. The lights are controlled by a switch on a post.

Q. Do you have any instructions with regard to the use of lights while you are cleaning up?

A. That is the first thing I do when I get to it in the morning, is turn on the lights.

(Testimony of William Gather Kelley)

Q. Do you turn on the lights in the whole area of your assignment, or the area merely where you are cleaning?

A. Light up the whole A building. That is what they call the A building, that end of the building. I light up the whole A building.

Q. Where do you finally end up with your trash pile?

A. I ended up on the southwest corner.

Q. And where did you have your hamper parked in the meantime?

A. I carried my hamper along with me until I picked up the trash. When I came back over in the center section I brought my hamper over in the center section and then I went back around in the southwest corner to pick up my broom and [185] come back and started to sweeping out that corner. By that time Kinny came up to me and asked me how I was getting along. I told him I was getting along all right. Then he came back about five minutes later and asked me how I was doing. I told him I was just about through. Where did he want me to go then, because I started—

Q. Just a minute. When did you first see Mr. Kinny, I mean after down in the basement?

A. About 5:20.

Q. That was shortly after you had gone onto the assignment that Mr. Kinny came up?

A. That is right.

Q. Was this before Mr. French and Mr. Franzen came up there?           A. That is right.

Q. Approximately how long before Mr. Franzen and Mr. French came up there did you see Mr. Kinny?

A. Mr. Kinny had left me—oh, about five or 10 minutes, when Mr. French came up and called me. He

(Testimony of William Gather Kelley)

called me and said, "Kelley"? I said, "Yes." He says, "Come here."

Q. Who called you, now? A. Mr. French.

Q. Wait just a minute. Let us follow Mr. Kinny now. A. All right. [186]

Q. You saw Mr. Kinny about how many minutes there before Mr. French came up?

A. About five or 10 minutes.

Q. About five or 10 minutes. Approximately where were you working when you first saw Mr. Kinny up on that floor?

A. When I first saw him I was up at the janitor closet. That is when he first came around and asked me how I was getting along.

Q. Were you talking to him before you actually started sweeping?

A. I was sweeping practically that section then when he came back and talked to me.

Q. Were you talking to anybody before you started to work? A. I talked to a fellow in the toilet.

Q. Who was he? A. I don't know who he was.

Q. One of the fellows that worked there?

A. I imagine he worked there. I had never seen the man before.

Q. Down in the southwest corner, near the end of that particular Pico section of the building, did you at any time notice any particular package that you took to be mail or that you knew was mail or that looked to you particularly like mail? [187]

A. No; because I wasn't looking for any packages.

(Testimony of William Gather Kelley)

Q. Did you make any cleaning of these intervening racks that I think are about seven feet tall there? Do you know what those things are?

A. Yes; those are racks about two feet wide and about five or six feet long and about 18 to 30 inches high from the ground. And that particular rack I saw was piled up with packages, magazines and papers.

Q. Did you bother with any of those things?

A. I shoved it around to one side. Some mail fell off and I left it laying there.

Q. You did not throw any mail that you saw and knew to be mail in the trash pile?           A. No.

Q. Did you at any time pay any particular attention as to the identity of any part of your trash before this hamper was turned upside down to empty it?

A. No; I never paid any attention to the trash until Mr. French and Kinny and Whitey—we always call the superintendent over there “Whitey” because all we knew him by was “Whitey”.

Q. You at no time took any notice of any part of what your trash consisted of?

A. No; not for mail I didn't.

Q. What did you do, just pick it up and throw it in the [188] hamper?

A. That is right; just picked it up and threw it in the hamper.

Q. What did you pick it up in?

A. Pick it up in the dust pan. At that particular time the dust pan was up at the other end. I just picked it up with my hands. The paper was heavy.



(Testimony of William Gather Kelley)

Q. When you put this trash in your hamper did you pack it down, tramp it down to get it all in?

A. If the trash is heavy enough, we do. But that morning the trash wasn't heavy enough so there was no reason for packing it down.

Q. Oh, this dust pan, where was it?

A. About middle ways of the building.

Q. It was not in your hamper at all? A. No.

Q. Therefore, at this particular time you took all the trash up with your hands?

A. Picked up all the biggest trash; yes.

Q. Did you in the course of picking it up take any particular notice of what it was other than just trash?

A. No; I wasn't paying any attention, for I was not looking for any mail.

Q. Did you notice any address on it to anybody?

A. No.

Q. Did you know Mr. French before that morning?  
[189] A. I never had seen him before.

Q. Have you ever been called into the office at any time during the seven years about their losing or mis-handling of the mail or anything else that was mail?

A. No.

Q. I mean trash that was mail? A. No.

Q. Have you ever been called in for putting mail in your trash hamper before? A. No.

Q. Has any of the trash that you have ever taken down to the sorting room, so far as you know, ever been screened to find any mail in it?

A. That I can't say.

Q. I mean before this time that you know of?

(Testimony of William Gather Kelley)

A. I couldn't say.

Q. It has never been called to your attention?

A. That I couldn't say.

Q. What did Mr. French say when he came up there?

A. When he came over in the section where I was he called me. He says, "Kelley?" I says, "Yes." He says, "Come here." I walked over to him and he says, "What did you do with those two packages that you picked up a while ago?" I says, "I never picked up any packages." He said, "Oh, yes; you did." He said, "Myself and Mr. So and So [190] saw you." He called "Whitey" by his name. He said "Whitey laid down the packages there for the purpose of your picking them up." I said, "I didn't pick up any packages." And by that time Kinny and Whitey came along together. Kinny came along there and said, "What the hell is the matter?" I says, "I don't know. He claims I picked up some mail here. I didn't do it." And by that time Whitey goes over in the center and gets my tub and brings it over there and turned the tub upside down and we all looked through the trash. I helped them to look through the trash, and we found those two packages in there. And he said—Mr. French says, "Here is a wrapper for one of the packages." And that is all I know about it.

Q. That was the first time that you knew or identified any particular part of what that trash was?

A. That is right.

Q. I think you said Mr. French told you when he came up there that these packages were put there for the purpose of your getting them or something to that effect?

A. That is right.

Mr. Townsend: You may cross examine.

(Testimony of William Gather Kelley)

Cross Examination

By Mr. Fitting:

Q. Mr. Kelley, on this particular morning did you [191] sweep off any sack racks in Pico Heights Station area? A. I swept the whole section.

Q. Did you sweep off the floor of any of the sack racks?

A. That is my instructions, to sweep off the bottom of the racks at all times and dust them off.

Q. Did you on that morning sweep off any of them in that area?

A. Yes; I swept that whole entire section.

Q. Would you please answer the question?

The Court: Did you sweep the floor of the platform of the sack racks?

The Witness: Yes.

Q. By Mr. Fitting: You swept the floor of the sack rack in the Pico Heights area on that morning?

A. Yes; I swept all the racks that had floors on them.

Q. Mr. Kelley, you also testified that when you were down in this Section E area you pushed around a full table that was laded with mail and things and some fell off? A. I just pushed a corner of it around; yes.

Q. And some packages fell off?

A. I don't know how much fell off. Some of the mail fell off of it; yes.

Q. You did not pick them up? A. No. [192]

Q. You just left it on the floor? A. Sure.

Q. You also testified, I believe, Mr. Kelley, that you never put a package in your hamper before?

A. That I never put one in my hamper before?

(Testimony of William Gather Kelley)

Q. Yes.

A. Sure; I never put no package in my hamper.

Q. No one ever complained to you about putting a package in your hamper before?      A. No.

Q. No one ever found one in there and called it to your attention?      A. Not up there, they didn't.

Q. At any time while you were employed by the Post Office Department?

A. Oh, there has been packages put in my tub and said I put them in, but I didn't put them in there.

Q. But packages have been found in your tub before?

A. One morning a package was found in my tub. I called Mr. Kinny's attention to it and told him I didn't do it.

Q. That is the only occasion you can remember?

A. That is right.

Q. Do you remember what the package was?

A. No. [193]

Q. Do you remember when that was?

A. No; I do not.

Q. But you called Mr. Kinny's attention to it?

A. Yes. If anything goes wrong I call his attention to it. That is my place to call his attention to it.

Mr. Fitting: That is all, your Honor.

Mr. Townsend: That is all.

The Court: You may step down.

Mr. Townsend: Defendant rests.

Mr. Fitting: I have a witness on rebuttal, your Honor.

The Court: Very well.

## GEORGE J. TURNER,

called as a witness by plaintiff in rebuttal, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: George J. Turner.

## Direct Examination

By Mr. Fitting:

Q. By whom are you employed, Mr. Turner?

A. By the Los Angeles Union Passenger Terminal.

Q. In what capacity?

A. I am a U. S. Mail separator.

Q. Where do you work? [194]

A. At the Terminal Annex on the R. C., known as the "Railroad Contact floor."

Q. Have you ever seen the defendant, Mr. Kelley, before?      A. I have.

Q. Did you see him sometime last summer sweeping?

A. Yes, sir.

Q. Will you tell the court what happened on that occasion?

Mr. Townsend: Just a moment. I object to that. What happened last summer, that has no connection with this case, if the court please.

The Court: Overruled. You may answer.

A. May I in my own words, your Honor? One time last summer we were getting quite a number of shipments of butter. There was a shortage of butter and—

Mr. Townsend: Just a moment, just a moment. If the court please, may we request that he specify both time and place before he proceeds?

The Court: About when was that, Mr. Turner?

(Testimony of George J. Turner)

The Witness: I would say sometime in June or July, one of those months.

Q. By Mr. Fitting: 1946? A. 1946.

The Court: Very well. [195]

A. And in my course of my work that morning I placed a package of about three and one-half or four pounds, anywhere between three and five pounds of butter, postmarked "Puente, California," over next to the wall.

Q. By Mr. Fitting: How big a package was that?

A. I imagine the package was about a foot square—a foot long and, say, about nine inches high.

Q. Had stamps on it? A. Yes, sir.

Q. An address on it? A. Yes, sir.

Q. Tied up with a string? A. Yes, sir.

Q. Go ahead.

A. And it was postmarked to Puente, California.

Mr. Townsend: Just a moment, just a moment. There is no question before the witness.

Q. By Mr. Fitting: Then what happened?

A. Well, we didn't have a dispatch for that particular point at that time of the morning; so I placed the butter over next to the wall. Mr. Kelley was sweeping. He was the janitor on that floor at that time. Mr. Kelley swept this butter—I watched Mr. Kelley sweeping—start at the north wall and swept toward the south wall, and in his course of sweeping—there are three chutes that come out [196] where the post office throw the mail out of the post office down so that we can dispatch it to others. Mr. Kelley swept this butter under the chute down as the "S. P. chute." I saw him do it. I waited until he took his hamper, rolled the basket under the chute, rolled the hamper under the chute, and after he did that I went over to



(Testimony of George J. Turner)

look to see if he had put the butter back and he hadn't put the butter back. I found the butter in his hamper. I reported it to my immediate superior, Mr. L. W. Phigpen, and he took the butter out of the hamper and cautioned Mr. Kelley not to put anything in the hamper with stamps on it.

Q. Do you know who Mr. Kinny is?

A. Yes; I know Mr. Kinny.

Q. Was Mr. Kinny there at that time?

A. No; Mr. Kinny was not there.

Mr. Fitting: That is all, your Honor.

#### Cross Examination

By Mr. Townsend:

Q. Now, Mr.—what is the name, again, sir?

A. Turner.

Q. How do you spell that?           A. T-u-r-n-e-r.

Q. Mr. Turner, what type of package was this butter in? [197]

A. It was wrapped in a brown package, nearly like a paper sack. It was a brown paper sack.

Q. What was the approximate size of it?

A. I would say it would be about a foot long and about from six to nine inches high.

Q. Approximately how much did it weight?

A. Somewhere between three and five pounds.

Q. How much butter was in there?

A. I don't know. I didn't open the package.

Q. How do you know it was butter at all?

A. Because it was marked "butter—perishable."

Q. Marked "butter"?           A. Yes, sir.

(Testimony of George J. Turner)

Q. Have you ever seen any other packages or boxes with "butter" printed on it that had other things in it?

A. I never found any in the mail.

Q. How long have you been working in the post office?

A. October the 2nd, 1942.

Q. Have you ever seen a cake mailed in a ginger ale box?

A. Marked "cake"? Not in a ginger ale box.

Q. Have you ever seen anything in a box that was labeled something else?

A. No.

Q. Where did you first get the package? [198]

A. I got the package out of the rack known as the "state and town rack".

Q. What was the occasion of your first getting it out of the rack?

A. Well, that is my duty when the mail comes in off of the train, if it is transferrable to different trains, then to separate it for that train.

Q. Is it your duty to find out what is in each package on the inside?

A. No, sir.

Q. Did you open the package?

A. No, sir.

Q. Was there any way you could see from handling the inside of it?

A. The only thing was that the sack was greasy and it was printed on there plainly "butter".

Q. That is the only deduction that you drew, that butter was the thing in there?

A. Yes, sir.

Q. Did you ever see any Christmas packages get through with butter in them?

A. Yes, sir.

Q. Did you ever see meats of various sorts shipped through the mail?

A. Sure. [199]

(Testimony of George J. Turner)

Q. Was that greasy?

A. Sometimes meats are greasy, sometimes they are not.

Q. All of them have these meat signs on them that they were meat?

A. No; they don't necessarily have meat signs on them. They sometimes have "perishable foods—rush" and "special delivery."

Q. Did you have a conversation with Mr. Kelley at this time before he had reached this package that you said had the butter in it?

A. You mean before he swept the butter under the chute?

Q. I asked you did you have any conversation with Mr. Kelley before the time this box that you say butter was in was touched?      A. Yes, sir.

Q. You talked with him before that time?

A. Sure.

Q. Where were you talking with him?

A. Down at the north end of the building.

Q. Did you see him sweeping toward the butter?

A. Yes, sir.

Q. You did not say: "Look out, Kelley, that is butter there, or to look out, don't sweep that," or anything that would cause him to be warned not to touch [200] the package?      A. No, sir.

The Court: Did you say that?

The Witness: No, sir.

(Testimony of George J. Turner)

Q. By Mr. Townsend: You just stood there and looked at him, is that right?

A. There wasn't anything I could do.

Q. Looked at him from the time he started sweeping all the way through as you describe and didn't say a word?

A. No.

Mr. Townsend: That is all.

Q. By Mr. Fitting: Mr. Turner, why didn't you say anything to Mr. Kelley?

A. Well, you see, it has been a practice that I didn't know. I didn't say anything to Mr. Kelley about the butter. I went and got the foreman and the foreman took the butter out, which was my duty to do. You see, if things are—well, anything that goes wrong you are supposed to report it, any accidents, to your immediate superior, and then he goes on from there.

Mr. Fitting: That is all.

Q. By Mr. Townsend: You report accidents as well as intentional affairs, is that right?

A. That is right.

Q. So, as to this situation you don't know whether [201] is was an accident or on purpose, do you?

A. I couldn't very well swear it was.

Q. You don't know, do you?           A. No.

Mr. Fitting: That is all. If the court please, I would like to put Mr. French on and just ask him two questions.

The Court: Very well.

## ALFRED E. FRENCH,

recalled as a witness by plaintiff in rebuttal, being previously sworn, was examined and testified as follows:

## Direct Examination

By Mr. Fitting:

Q. Mr. French, when you were in the observation place marked "E" watching Mr. Kelley at work in the Pico Heights Station marked "A" did you see him sweep off any of the package racks?

A. No, sir; he didn't sweep any of the package racks off at all.

Q. Now, Mr. French, when you came down into the area marked "B"—

Mr. Townsend: Just a moment, just a moment. I would like to get that answer clear. You say that you did not see [202] him? A. I say he did not.

Mr. Townsend: Proceed.

Q. By Mr. Fitting: Did you see Mr. Kelley the entire time that he was in this general area?

A. I did; yes, sir.

Q. All the time that he cleaned it up and then moved on to the next area? A. Yes, sir.

Q. Now, Mr. French, when you accosted Mr. Kelley in the area marked "B" in Station E, with Mr. Franzen, were there any packages of mail of any sort on the floor there? A. No, sir.

Q. You are sure of that? A. I am sure of that.

Mr. Fitting: All right.

The Court: Any questions, Mr. Townsend?

Mr. Townsend: I think that is all, your Honor.

The Court: Have you any questions?

Mr. Townsend: No questions.

The Court: You may step down. Do both sides rest?

Mr. Townsend: The defendant rests.

Mr. Fitting: Yes, your Honor.

The Court: Any argument? I do not care to hear from the Government. Do you have anything to say, Mr. [203] Townsend?

Mr. Townsend: I do, if your Honor please.

(Argument by Mr. Townsend omitted from transcript.)

The Court: Mr. Townsend, if defendant had taken only one package, one of the decoys, there might be some room to say that there is reasonable doubt. But under all the circumstances and the fact that both decoys placed in different places under different circumstances were found in his tray, under the circumstances here, leave no doubt in my mind.

The court finds the defendant guilty as charged in the first count of the indictment and finds the defendant guilty as charged in Count Two of the indictment.

I will refer the case to the probation officer for presentence investigation and report, and fix February 10th at 1:30 as the time for the hearing of that report and for sentence.

In the meantime the defendant is remanded to the custody of the marshal and his bond exonerated.

Anything more, Mr. Clerk?

The Clerk: That is all, your Honor.

Mr. Townsend: If the court please, would it be possible that the defendant remain on the present bail until the date of the hearing on the probationary report?

The Court; No, Mr. Townsend. The defendant will be [204] remanded to the custody of the marshal and his bail exonerated.

[Endorsed]: Filed Jun. 18, 1947. [205]



[Endorsed]: No. 11557. United States Circuit Court of Appeals for the Ninth Circuit. William Gather Kelley, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed June 23, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for  
the Ninth Circuit.

At a Stated Term, to wit: The October Term A. D. 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City of Los Angeles, in the State of California, on Friday the twenty-first days of March in the year of our Lord one thousand nine hundred and forty-seven.

Present:

Honorable William Denman, Circuit Judge, Presiding,  
Honorable Albert Lee Stephens, Circuit Judge,  
Honorable Homer T. Bone, Circuit Judge.

No. 11557

WILLIAM GATHER KELLEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER GRANTING MOTION FOR ADMISSION  
TO BAIL PENDING APPEAL

Upon consideration of the motion of appellant, filed March 7, 1947, for admission to bail pending appeal, and of the opposition of appellee thereto, filed March 17, 1947, and oral presentation of said motion,

It Is Ordered that said motion be, and hereby is granted, and that appellant be, and he hereby is admitted

to bail upon the filing with the clerk of the District Court of the United States for the Southern District of California of a bail bond in amount of Two Thousand Five Hundred Dollars (\$2,500.00) conditioned as required by law, the bond to be approved by the United States Attorney for said District.

CERTIFIED COPY OF ORDER GRANTING  
MOTION FOR ADMISSION TO BAIL  
PENDING APPEAL

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of Los Angeles, in the State of California, this 21st day of March, 1947.

(Seal)

PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth  
Circuit

By Frank H. Schmid

Deputy Clerk

[Endorsed]: No. 19112. Filed Mar. 21, 1947.

[Title of Circuit Court of Appeals and Cause]

STIPULATION AND EXTENSION OF TIME FOR  
RECORD ON APPEAL

It is hereby stipulated, by and between the parties herein, through their respective counsel, that the time for filing the record on appeal herein, under and pursuant to Rule 39(c) of the Federal Rules of Criminal Procedure, may be extended from the forty day period to and including an additional thirty days.

Dated this 26th day of March, 1947.

VINCE MONROE TOWNSEND, JR.

Attorney for Appellant

PAUL FITTING

Attorney for Appellee

ORDER

Under and Pursuant to Said Stipulation, It Is so Ordered.

Dated this 28 day of March, 1947.

CLIFTON MATTHEWS

Judge of the Circuit Court of Appeals in and for the  
Ninth Circuit.

A True Copy. Attest: Mar. 31, 1947.

(Seal)

PAUL P. O'BRIEN

Clerk

[Endorsed]: Filed Mar. 31, 1947. Paul P. O'Brien,  
Clerk.

[Endorsed]: No. 19112. Filed Apr. 1, 1947.

[Title of Circuit Court of Appeals and Cause]

STIPULATION AND EXTENSION OF TIME FOR  
RECORD ON APPEAL

It is hereby stipulated, by and between the parties herein, through their respective counsel, that the time for filing the record on appeal herein, under and pursuant to Rule 39(c) of the Federal Rules of Criminal Procedure, may be extended to and including an additional thirty days.

Dated this 28th day of April, 1947.

VINCE MONROE TOWNSEND, JR.

Attorney for Appellant

PAUL FITTING

Attorney for Appellee

ORDER

Under and Pursuant to Said Stipulation, It Is so Ordered.

Dated this 29th day of April, 1947.

ALBERT LEE STEPHENS

Judge of the Circuit Court of Appeals in and for the  
Ninth Circuit

A True Copy. Attest: May 2, 1947.

(Seal)

PAUL P. O'BRIEN

Clerk

[Endorsed]: Filed May 2, 1947. Paul P. O'Brien,  
Clerk.

[Endorsed]: No. 19112. Filed May 5, 1947.

[Title of Circuit Court of Appeals and Cause]

### POINTS RELIED UPON ON APPEAL

The points upon which Appellant relies on appeal are as follows:

#### I.

The Indictment and Each Count Thereof, Fails to Describe or Charge Any Public Offense Against the United States or Any Penal Law Thereof.

Count I of the Indictment fails to charge a Public Offense or any Violation of Title 18 U. S. C. A., Section 318.

It fails to allege or show whose property was embezzled and secreted.

It fails to aver that the act charged against the accused was wilfully or unlawfully or feloniously performed.

It fails to set forth or describe the sender of the alleged package or to aver that such sender intended that it should be conveyed by mail to the addressee.

Count II of the Indictment fails to charge a Public Offense or any Violation of Title 18 U. S. C. A., Section 318.

It fails to aver that the sender of the alleged package intended it to be conveyed to the addressee, Mrs. A. S. Cuff, by mail or otherwise.

It fails to allege that the accused wilfully, or unlawfully or feloniously detained and/or delayed the package involved.

#### II.

The Evidence Is Insufficient and There Is No Substantial or Competent Evidence to Support the Judgment.



a. The evidence fails to show that either of the packages involved were ever in the United States Mails.

b. Such evidence fails to show that either of said packages ever came into or were in the custodial possession of the accused.

c. Such evidence fails to show that either of the alleged senders of said packages intended them to be delivered to the persons to whom they were addressed.

d. The Government's evidence conclusively establishes that it was the intention of the actual senders and depositors of said packages that they should be repossessed in the Los Angeles Post Office and should not be mailed or actually delivered by mail to the persons to whom said packages were addressed.

e. Such evidence fails to show that the accused detained or delayed the progress through the United States Mail of the packages, addressed to Mrs. A. S. Cuff or that it was detained or delayed otherwise than by passing through ordinary routine procedure and red tape, pursuant to practice and rules of said Los Angeles Post Office.

f. The evidence produced by the Government merely proves that imperfect and incomplete decoy procedure was used in which assignments (a), (b), (c), and (d) above were missing.

g. The evidence is legally insufficient to show that the accused ever intended to detain or delay said last named package or to steal or secrete or embezzle the package described in the first count of the indictment.

GLADYS TOWLES ROOT

Attorney for Appellant

[Endorsed]: Filed Jun. 28, 1947. Paul P. O'Brien,  
Clerk.